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General Services Administration

Federal Procurement Regulations

Title 41—PUBLIC CONTRACTS

Chapter 1—Federal Procurement Regulations

REVISION OF FPR

This revision of the Federal Procurement Regulations (FPR) constitutes a complete republication of the FPR. It is the first such republication since the Federal Procurement Regulations System was established in March 1959 (24 F.R. 1933) and will be referred to as the second edition, June 1964, of the FPR.

Issued pursuant to the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, the FPR is a vital part of the Federal Government supply system. This republication is a significant step toward achieving GSA's objective of providing broadened guidance in Government procurement, including related economic aspects, as well as techniques and procedures for the actual contracting process.

Since their inception in 1959, the Regulations have been made considerably more comprehensive and have achieved wide acceptance. Executive agencies have made significant progress in developing their regulations which implement and supplement the Federal Procurement Regulations.

Continuing improvement and development of the Regulations and the overall System, benefiting both industry and Government, is a major GSA program goal. Included will be broadened coverage to take advantage of advances in technology and industry, modern merchandising techniques and industry ability and desire to supply Government in the most efficient and economical manner. Also to be included are economic policies affecting procurement as well as contracting policy and procedure relating to construction, leasing, public utility services, communication, transportation, and other procurement areas.

The new edition of the FPR continues to devote substantial attention to the needs of small business concerns and the areas of labor surplus. It also includes numerous technical, editorial and minor substantive changes in various portions of material previously published in the FPR. In addition, there have been a number of major revisions of and additions to the regulations. The changes, revisions and additions are listed in FPR Circular No. 1, second edition, June 1964, which promulgates the loose-leaf version of the new edition. The list is also available in the Central Office of GSA, Washington, D.C. However, the principal revisions and additions include the following:

(1) Substitution of a new Certificate of Independent Price Determination for the previous Certificate of Noncollusion (§ 1–1.317).

(2) Addition of policies and procedures regarding the procurement and use of jewel bearings (§ 1–1.319).

(3) Extensive revision of the policies and procedures, including establishment of administrative safeguards, with respect to debarment, placement in ineligibility status and suspension (Subpart 1–1.6).

(4) New and revised requirements regarding the use of negotiation which are similar to those established by or pursuant to Public Law 87–653 (amended Chapter 137, Title 10 U.S.C.) (Part 3).

(5) Revision of requirements relating to the use of fixed-price incentive and price redeterminable contracts, contracts with performance incentives, and basic ordering agreements (Part 3).

(6) Addition of policies and procedures designed to implement the Buy American Act and Executive Order No. 10582, as amended, with respect to supply and service contracts which are primarily a codification of existing practices of civilian executive agencies (Subpart 1–6.1).

(7) Revision and expansion of the treatment of the subject of bonds and the addition of new policies and procedures with respect to sureties on bonds and insurance (Part 10).

(8) Extensive revision of the subject of Federal, State, and local taxes which includes: The latest developments in the area of Federal Excise Taxes and exemptions, a new tax clause for use in most advertised contracts and certain negotiated contracts which eliminates upward or downward price adjustment for State and local taxes imposed or modified after the contract date, and an alternative clause for use in certain negotiated contracts over $10,000 (Part 11).

(9) Application of the Contract Work Hours Standards Act (40 U.S.C. 327–332) to contracts other than construction contracts (Subpart 1–12.3).

(10) Addition of policies, procedures, and contract clauses with respect to Labor Standards in Construction which implement Parts 3 and 5 of Title 29, Code of Federal Regulations as revised by the Department of Labor, January 4, 1964 (29 F.R. 95) (Subpart 1–12.4).

(11) Addition of policies and procedures which have been approved by the President's Committee on Equal Employment Opportunity to implement Executive Orders No. 10925 and No. 11114 and the Rules and Regulations of the President's Committee (Subpart 1–12.8).

(12) Addition of policies and procedures designed to implement Executive Order No. 11141 regarding discrimination on the basis of age (Subpart 1–12.10).

(13) Addition of policies and procedures applicable to the financing of most types of contracts for purposes of both performance and termination (Part 30).

(14) Revision of Standard Forms 18, 19A, 21, 22, 23A, 24, 25, 32, 34, 35, 44, 147, and 148; addition of Standard Form 25B; discontinuance of Standard Forms 27, 27A, and 27B; and addition of illustrations of Standard Forms 40, 40A, and 41 (Part 16).

This revision of the Federal Procurement Regulations shall become effective October 1, 1964, but may be observed earlier. Revised Standard Forms 18, 19A, 21, 22, 23A, 24, 25, 25A, 25B, 32, 34, 35, 44, 147, and 148 shall be used on and after December 1, 1964; however, the forms may be used as soon as available from General Services Administration supply depots. Since supplies of the revised Standard Forms are not expected to be available by the effective date of the regulations, agencies shall, on and after October 1, 1964 and pending receipt of revised forms, amend the provisions on the prior Forms 19A, 21, 22, 23A, and 32 to conform with the provisions on the revised forms as illustrated in § 1–16.901 whenever such forms are used.

The following General Services Administration Regulations and Circulars are rescinded effective October 1, 1964:

(1) Personal Property Management Regulation No. 33, December 31, 1956.

(2) Circular No. 35, December 18, 1951.

(3) General Regulation No. 25, March 29, 1961, and Supplement No. 1 thereto, April 18, 1961.

(4) Circular No. 100, February 3, 1955.

(5) General Regulation No. 16, October 13, 1954, and Supplement No. 1 thereto, February 3, 1955.

(6) Bureau of Federal Supply Circular Letter B–69, Standard Contract Forms, October 1, 1947.

Chapter 1 of Title 41 of the Code of Federal Regulations is revised to read as set forth below.

BERNARD L. BOUTIN,
Administrator of General Services.

JUNE 30, 1964.

Part
1–1 General.
1–2 Procurement by formal advertising.
1–3 Procurement by negotiation.
1–4 Special types and methods of procurement.
1–5 Special and directed sources of supply.
1–6 Foreign purchases.
1–7 Contract clauses.
1–8 Termination of contracts.
1–10 Bonds and insurance.
1–11 Federal, State, and local taxes.
1–12 Labor.
1–14 Inspection and acceptance.
1–15 Contract cost principles and procedures.
1–16 Procurement forms.
1–17 Extraordinary contractual actions to facilitate the national defense.
1–30 Contract financing.

Introduction

1. *Establishment of Federal Procurement Regulations System.* The initial issuance of Chapter 1 of Title 41 of the Code of Federal Regulations, published in Part II of the FEDERAL REGISTER of March 17, 1959 (24 F.R. 1933), established the Federal Procurement Regulations System. The System consists of two major elements: (a) Procurement policies and procedures for Government agencies prescribed by the Administrator of General Services in the "Federal Procurement Regulations," and (b) agency implementing regulations. The Federal Procurement Regulations are published as Chapter 1 of Title 41 of the Code of Federal Regulations, and agency implementing regulations are published in succeeding chapters of that title.

2. *Relationship to the Department of Defense.* While the Federal Procurement Regulations are applicable to all executive agencies, they are not made mandatory on the Department of Defense, except with respect to matters concerning standard Government forms and clauses, Federal Specifications and Standards, and except as directed by the

President, Congress, or other authority. Therefore, except as above described, the extent of implementation of the Federal Procurement Regulations by the Department of Defense and its participation in the System is determined by that Department. However, there is coordination with the Department of Defense in the development and issuance of the Federal Procurement Regulations and the Armed Services Procurement Regulation.

3. *Interagency coordination in procurement policy.* Coordination in Government procurement policy under the FPR System is achieved through an Interagency Procurement Policy Committee, of the principal procurement agencies and the Small Business Administration, through coordination between the Armed Services Procurement Regulation Committee and the GSA Office of the General Counsel and through a system of regulation clearance procedures, both formal and informal. Both the Office of the Comptroller General of the United States and the Bureau of the Budget participate in this clearance procedure. Where appropriate, industry groups are also consulted from time to time.

4. *Background.* The System is an outgrowth of recommendations of the President's Cabinet Committee on Small Business and the work of the Interagency Task Force for Review of Government Procurement Policies and Procedures, which was established by the Administrator of General Services pursuant to a Presidential directive of September 26, 1956. The System was originally developed to promote the objectives of eliminating needless inconsistencies between agency procurement regulations, minimizing complexities and inequities in procurement policies and procedures, and making agency procurement regulations more readily available to businessmen and others concerned. Its purposes have been somewhat broadened so that its goals now include, through broadened coverage, economic methods of procurement and supply to take advantage of modern business methods and industry ability and desire to supply Government in the most efficient and economical manner, thereby benefiting both industry and Government.

5. *Availability of Regulations in the Federal Procurement Regulations System.* The Federal Procurement Regulations, as revised and amended through the end of each calendar year, are printed shortly after January 1 of the following year in bound volumes containing Title 41 of the Code of Federal Regulations. The Federal Procurement Regulations are also available in loose leaf volume form. Each change during the year is published in the FEDERAL REGISTER and shortly thereafter is issued in the loose leaf form. The annual volume containing Title 41 of the Code of Federal Regulations may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C., and the issuances in loose leaf form as well as the daily issues of the FEDERAL REGISTER are available from the same source on a subscription basis. Agency procurement regulations which are published in the FEDERAL REGISTER would be available through the subscription to that publication. These regulations are also published in the volume containing Title 41 of the Code of Federal Regulations.

6. *Delegation of authority.* On March 26, 1962, a general delegation of authority (superseding previous delegations of authority) was granted (27 F.R. 3017) to all executive agencies, except those specified in 10 U.S.C. 2303(a), to utilize the provisions of Title III of the Federal Property and Administrative Services Act of 1949, as amended. The delegation of authority enables agencies to utilize fully the policies and procedures set forth in Part 1-3 of the Federal Procurement Regulations, but the delegated authority may be exercised only in accordance with applicable limitations and requirements of the Federal Property and Administrative Services Act of 1949, particularly sections 304 and 307, and in accordance with policies, procedures, limitations, controls, and reporting requirements prescribed by the General Services Administration.

7. *Interpretation of these Regulations.* In the interest of uniform interpretation and application of these regulations agencies may wish to submit problems of interpretation to the GSA organizational element administering the FPR System. Where desirable or necessary, the Interagency Procurement Policy Committee will be convened to assist in resolution of controversial policy aspects. In issuing such interpretations, every effort will be made to consult the "legislative history" of the particular section involved.

PART 1-1—GENERAL

Sec.
1-1.000 Scope of part.

Subpart 1-1.0—Regulation System

1-1.001 Scope of subpart.
1-1.002 Purpose.
1-1.003 Authority.
1-1.004 Applicability.
1-1.005 Exclusions.
1-1.006 Issuance.
1-1.006-1 Code arrangement.
1-1.006-2 Publication.
1-1.006-3 Copies.
1-1.006-4 Coordination.
1-1.007 Arrangement.
1-1.007-1 General plan.
1-1.007-2 Numbering.
1-1.007-3 Citation.
1-1.008 Agency implementation.
1-1.009 Deviation.
1-1.009-1 Description.
1-1.009-2 Procedure.

Subpart 1-1.1—[Reserved]

Subpart 1-1.2—Definition of Terms

1-1.201 Definitions.
1-1.202 Executive agency.
1-1.203 Federal agency.
1-1.204 Head of the agency.
1-1.205 Procuring activity.
1-1.206 Head of the procuring activity.
1-1.207 Contracting officer.
1-1.208 Contract.
1-1.209 Procurement.
1-1.210 [Reserved]
1-1.211 [Reserved]
1-1.212 [Reserved]
1-1.213 [Reserved]
1-1.214 [Reserved]
1-1.215 Government instrumentality.
1-1.216 United States.
1-1.217 Possessions.
1-1.218 Negotiation.
1-1.219 Contract modification.
1-1.220 Procurement item.

Subpart 1-1.3—General Policies

1-1.301 Methods of procurement.
1-1.301-1 Competition.
1-1.301-2 Formal advertising.
1-1.301-3 Negotiation.
1-1.302 Procurement sources.
1-1.302-1 General.
1-1.302-2 Production and research and development pools.
1-1.303 Approval signatures.
1-1.304 [Reserved]
1-1.305 Specifications.
1-1.305-1 Mandatory use of Federal Specifications.
1-1.305-2 Exceptions to mandatory use of Federal Specifications.
1-1.305-3 Deviations from Federal Specifications.
1-1.305-4 Optional use of Interim Federal Specifications.

Sec.
1-1.305-5 Use of Federal and Interim Federal Specifications in Federal construction contracts.
1-1.305-6 Military and departmental specifications.
1-1.306 Standards.
1-1.306-1 Mandatory use and application of Federal Standards.
1-1.307 Purchase descriptions.
1-1.307-1 Applicability.
1-1.307-2 General requirements.
1-1.307-3 Commercial, and State and local government specifications and standards.
1-1.307-4 Brand name products or equal.
1-1.307-5 Limitations on use of brand name or equal purchase descriptions.
1-1.307-6 Invitation for bids, brand name or equal descriptions.
1-1.307-7 Bid evaluation and award, brand name or equal descriptions.
1-1.307-8 Procedure for negotiated procurements and small purchases.
1-1.307-9 Inspection and acceptance.
1-1.308 [Reserved]
1-1.309 [Reserved]
1-1.310 Responsible prospective contractor.
1-1.310-1 Scope.
1-1.310-2 General.
1-1.310-3 Applicability.
1-1.310-4 General policy.
1-1.310-5 Standards.
1-1.310-6 Determination of responsibility.
1-1.310-7 Information regarding responsibility.
1-1.310-8 Capacity and credit of small business concerns.
1-1.310-9 Pre-award on-site evaluation.
1-1.310-10 Performance records.
1-1.310-11 Subcontractor responsibility.
1-1.311 Priorities, allocations, and allotments.
1-1.312 [Reserved]
1-1.313 Records of contract actions.
1-1.314 Solicitations for informational or planning purposes.
1-1.315 Use of liquidated damages provisions in procurement contracts.
1-1.315-1 General.
1-1.315-2 Policy.
1-1.315-3 Contract provisions.
1-1.316 Time of delivery or performance.
1-1.316-1 Scope and applicability.
1-1.316-2 General.
1-1.316-3 Factors to be considered.
1-1.316-4 Terms.
1-1.316-5 Time of delivery clauses.
1-1.317 Noncollusive bids and proposals.
1-1.318 Contracting Officer's decision under a disputes clause.
1-1.319 Procurement of items using jewel bearings.

Subpart 1-1.4—[Reserved]

Subpart 1-1.5—Contingent Fees

Sec.
1-1.500 Scope of subpart.
1-1.501 Applicability.
1-1.502 Improper influence.
1-1.503 Covenant.
1-1.504 General principles and standards applicable to the covenant.
1-1.504-1 Use of principles and standards.
1-1.504-2 Contingent character of the fee.
1-1.504-3 Exceptions to the prohibition.
1-1.504-4 Bona fide employee.
1-1.504-5 Bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.
1-1.504-6 Fees for "information."
1-1.505 Representation and agreement required from prospective contractors.
1-1.506 Interpretation of the representation.
1-1.507 Use of Standard Form 119.
1-1.507-1 Form prescribed.
1-1.507-2 Statement in lieu of form.
1-1.507-3 Exceptions.
1-1.508 Enforcement.
1-1.508-1 Failure or refusal to furnish representation and agreement.
1-1.508-2 Failure or refusal to furnish Standard Form 119.
1-1.508-3 Misrepresentations or violations of the covenant against contingent fees.
1-1.509 Preservation of records.

Subpart 1-1.6—Debarred, Suspended, and Ineligible Bidders

1-1.600 Scope of subpart.
1-1.601 General.
1-1.601-1 Definitions.
1-1.602 Establishment and maintenance of list of concerns or individuals debarred, suspended, or declared ineligible.
1-1.602-1 Bases for entry on the debarred, suspended and ineligible list.
1-1.603 Treatment to be accorded firms or individuals in debarred, suspended, or ineligible status.
1-1.604 Causes and conditions applicable to determination of debarment by an executive agency.
1-1.604-1 Procedural requirements relating to the imposition of debarment.
1-1.605 Suspension of bidders.
1-1.605-1 Causes and conditions under which executive agencies may suspend contractors.
1-1.605-2 Period and scope of suspension.
1-1.605-3 Restrictions during period of suspension.
1-1.605-4 Notice of suspension.
1-1.606 Agency procedure.
1-1.607 General Services Administration responsibility.

Subpart 1-1.7—Small Business Concerns

Sec.
1-1.700 General.
1-1.701 Definitions.
1-1.701-1 Small business concern (for Government procurement).
1-1.701-2 Affiliates.
1-1.701-3 Dominance in field of operation.
1-1.701-4 Small business Government subcontractors.
1-1.701-5 Number of employees.
1-1.701-6 Industry.
1-1.701-7 Certificate of competency.
1-1.701-8 Set-aside for small business.
1-1.701-9 Small business restricted advertising.
1-1.702 Small business policies.
1-1.703 Determination of status as a small business concern.
1-1.703-1 Representation by bidder or offeror.
1-1.703-2 Protest regarding small business status.
1-1.704 Agency program direction and operation.
1-1.705 Cooperation with the Small Business Administration.
1-1.705-1 General.
1-1.705-2 SBA representatives.
1-1.705-3 Screening of procurements.
1-1.105-4 Access to information.
1-1.705-5 Joint small business set-asides.
1-1.705-6 Certificates of competency.
1-1.705-7 Performance of contract by SBA.
1-1.706 Procurement set-asides for small business.
1-1.706-1 General.
1-1.706-2 Review of SBA set-aside proposals.
1-1.706-3 Withdrawal or modification of set-asides.
1-1.706-4 Reporting for Department of Commerce Procurement Synopsis.
1-1.706-5 Total set-asides.
1-1.706-6 Partial set-asides.
1-1.706-7 Automatic dissolution of set-asides.
1-1.706-8 Contract authority.
1-1.707 [Reserved]
1-1.708 Certificate of competency program.
1-1.708-1 General.
1-1.708-2 Applicability and procedure.
1-1.708-3 Conclusiveness of certificate of competency.
1-1.709 Records and reports.
1-1.710 Subcontracting with small business concerns.
1-1.710-1 General.
1-1.710-2 Small business subcontracting program.
1-1.710-3 Required clauses.
1-1.710-4 Review of subcontracting program.

Subpart 1–1.8—Labor Surplus Area Concerns

Sec.
1–1.800 Scope of subpart.
1–1.801 Definitions.
1–1.801–1 Labor surplus area concern.
1–1.801–2 Labor surplus area.
1–1.801–3 Small business concern.
1–1.802 Labor surplus area policies.
1–1.802–1 General policy.
1–1.802–2 Specific policies.
1–1.802–3 Buy American Act.
1–1.803 [Reserved]
1–1.804 Partial set-asides for labor surplus area concerns.
1–1.804–1 General.
1–1.804–2 Notice to bidders or offerors.
1–1.804–3 Award procedures.
1–1.804–4 Withdrawal of set-asides.
1–1.804–5 Contract authority.
1–1.805 Subcontracting with labor surplus area concerns.
1–1.805–1 General.
1–1.805–2 Labor surplus area subcontracting program.
1–1.805–3 Required clauses.
1–1.805–4 Review of subcontracting program.
1–1.806 Depressed industries.
1–1.806–1 General.
1–1.806–2 Apparel industry (Notification No. 53).
1–1.806–3 Petroleum and petroleum products industry (Notification No. 58).
1–1.806–4 Shipbuilding industry (Notification No. 57).
1–1.806–5 Textile industry (Notification No. 38).
1–1.807 Report on preference procurement in labor surplus areas.

Subpart 1–1.9—Reporting Possible Antitrust Violations

1–1.901 General.
1–1.902 Documents to be transmitted.
1–1.903 Additional information.

Subpart 1–1.10—Publicizing Procurement Actions

1–1.1001 General policy.

Sec.
1–1.1002 Availability of invitations for bids and requests for proposals.
1–1.1003 Synopses of proposed procurements.
1–1.1003–1 Department of Commerce Synopsis.
1–1.1003–2 General requirements.
1–1.1003–3 Research and development.
1–1.1003–4 Synopses of subcontract opportunities.
1–1.1003–5 Pre-invitation notices.
1–1.1003–6 Time of publicizing.
1–1.1003–7 Preparation and transmittal.
1–1.1004 Synopses of contract awards.
1–1.1004–1 Preparation and transmittal.
1–1.1005 Classification codes.
1–1.1005–1 Codes for services.
1–1.1005–2 Codes for supplies.

Subpart 1–1.11—Qualified Products

1–1.1101 Procurement of qualified products.

Subpart 1–1.12 [Reserved]
Subpart 1–1.13 [Reserved]
Subpart 1–1.14 [Reserved]
Subpart 1–1.15 [Reserved]

Subpart 1–1.16—Reports of Identical Bids

1–1.1601 General.
1–1.1602 Definitions.
1–1.1603 Reporting requirements.
1–1.1603–1 Cases to be reported.
1–1.1603–2 Preparation of reports.
1–1.1603–3 Submission of reports.
1–1.1604 Supplemental requests by Attorney General.
1–1.1605 Information to be obtained from bidders.
1–1.1605–1 Invitation for bids provision.
1–1.1605–2 Failure to provide information.

AUTHORITY: The provisions of this Part 1–1 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1–1.000 Scope of part.

This part sets forth policies and procedures concerning: the Federal Procurement Regulations System; definition of terms used throughout this chapter; general policies of procurement; contingent fees; debarred and ineligible bidders; small business concerns; labor surplus area concerns; reporting possible antitrust violations; publicizing procurement actions; and qualified products.

Subpart 1–1.0—Regulation System

§ 1–1.001 Scope of subpart.

This subpart sets forth introductory information pertaining to the Federal Procurement Regulations System; its purpose, authority, applicability, issuance, arrangement, implementation, and deviation procedure.

§ 1–1.002 Purpose.

This subpart establishes the Federal Procurement Regulations System for the codification and publication of uniform policies and procedures applicable to the procurement of personal property and nonpersonal services (including construction) by executive agencies, except as limited by the provisions of section 1–1.004 with respect to the Department of Defense. The System includes regulations prescribed by the Administrator of General Services, called the Federal Procurement Regulations (FPR), as well as individual agency procurement regulations which implement and supplement the FPR.

§ 1–1.003 Authority.

The Federal Procurement Regulations System is prescribed by the Administrator of General Services under the Federal Property and Administrative Services Act of 1949, as amended, and the FPR are developed in cooperation with the procurement agencies and are issued by him under the Act or other authority specially cited.

§ 1–1.004 Applicability.

Federal Procurement Regulations apply to all Federal agencies to the extent specified in the Federal Property and Administrative Services Act of 1949, as amended, or in other law. Except for standard Government forms and clauses, Federal Specifications and Standards, and except as directed by the President, Congress, or other authority, these Regulations are not made mandatory on the Department of Defense. Therefore, the extent of their implementation within the Department of Defense and participation in the System will be determined by that Department. The Regulations apply to procurements made within and outside the United States unless otherwise specified.

§ 1–1.005 Exclusions.

Certain Governmentwide policies and procedures which come within the scope of this chapter nevertheless may be excluded from Federal Procurement Regulations. These exclusions include the following categories:

(a) Subject matter which bears a security classification.

(b) Policy or procedure which is expected to be effective for a period of less than six months.

(c) Policy or procedure which is being instituted on an experimental basis for a reasonable period.

§ 1–1.006 Issuance.

§ 1–1.006–1 Code arrangement.

Federal Procurement Regulations are issued in the Code of Federal Regulations as Chapter I of Title 41, Public Contracts. Succeeding chapters of Title 41 are devoted to implementing and supplementing material developed and issued by particular Federal agencies to govern their procurement activities, as well as regulations of general application to procurement agencies issued by other Federal regulatory agencies, such as the Department of Labor under the Walsh-Healey Public Contracts Act.

§ 1–1.006–2 Publication.

Federal Procurement Regulations are published (in Title 41) in the daily issue of the FEDERAL REGISTER, in cumulated form in the Code of Federal Regulations, and in separate loose-leaf volume form.

§ 1–1.006–3 Copies.

Copies of Federal Procurement Regulations in Federal Register and Code of Federal Regulations form may be purchased by Federal agencies and the public, at nominal cost, from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Copies of Federal Procurement Regulations in loose-leaf volume form may be obtained by Federal agencies from the General Services Administration, in a very limited quantity, and may be purchased by the public from the Superintendent of Documents.

§ 1–1.006–4 Coordination.

In the development of Federal Procurement Regulations, there will be solicited the views of interested Federal agencies and, where appropriate and feasible, the views of interested business and professional organizations. The Regulations will be coordinated with the Small Business Administration to assure adequate consideration of small business interests.

§ 1–1.007 Arrangement.

§ 1–1.007–1 General plan.

The general plan, numbering system, and nomenclature used in the Federal Procurement Regulations conform with Federal Register standards approved for the FPR.

§ 1–1.007–2 Numbering.

The numbering system permits identification of every unit. The first digit represents the chapter number allocated to each agency, followed by a dash. This is followed by the part number which may be one or more digits followed by a decimal point. The numbers after the decimal points represent, respectively, the subpart, section (in two digits), and, after the dash, subsection, paragraph, subparagraph, and further inferior divisions. For example, this division is called (section) "§ 1–1.007–2," in which the first digit denotes the chapter, the second the part, the third the subpart, the fourth and fifth the section, and the sixth the subsection.

§ 1–1.007–3 Citation.

Federal Procurement Regulations will be cited in accordance with Federal Register standards approved for the FPR. Thus, this section, when referred to in divisions of the Federal Procurement Regulations, should be cited as "§ 1–1.007–3 of this chapter." When this section is referred to formally in official documents, such as legal briefs, it should be cited as "41 CFR 1–1.007–3." Any section of Federal Procurement Regulations may be informally identified, for purposes of brevity, as "FPR" followed by the section number, such as "FPR 1–1.007–3."

§ 1–1.008 Agency implementation.

As portions of FPR material are prescribed, agencies shall publish in the FEDERAL REGISTER implementing regulations deemed necessary for business concerns, and others properly interested, to understand basic and significant agency procurement policies and procedures which implement, supplement, or deviate from the FPR. Detailed instructions of interest primarily for internal agency guidance need not be published. Implementing regulations shall be prepared to conform with FPR style and arrangement.

§ 1–1.009 Deviation.

§ 1–1.009–1 Description.

As used in these Regulations, the term "deviation" includes any of the following actions:

(a) When a prescribed contract clause is set forth verbatim, use of a contract clause covering the same subject matter which varies from that set forth.

(b) When a standard or other form is prescribed, use of any other form for the same purpose.

(c) Alteration of a prescribed standard or other form, except as may be authorized in the Regulations.

(d) The imposition of lesser or, where the regulation expressly prohibits, greater limitations than are imposed upon the use of a contract clause, form procedure, type of contract, or upon any other procurement action, including but not limited to, the making or amendment of a contract, or actions taken in connection with the solicitation of bids or proposals, award, administration, or settlement of contracts.

(e) When a policy or procedure is prescribed, use of any inconsistent policy or procedure.

§ 1–1.009–2 Procedure.

In the interest of establishing and maintaining unformity to the greatest extent feasible, deviations from the Federal Procurement Regulations shall be kept to a minimum and controlled as follows:

(a) The head of each agency exercising procurement authority shall prescribe a formal procedure for the control of deviations within the agency. A copy of the procedure shall be furnished to the General Services Administration.

(b) In individual cases, deviations may be authorized by the head of the agency or the officers designated by him for this purpose, in accordance with procedures established by the agency. In each instance the file shall disclose the nature of the deviation and the reasons for such special action.

(c) Deviations in classes of cases shall be considered on an expedited basis jointly by the agency desiring the deviation and the General Services Administration unless, in the considered judgment of the agency and with due regard to the objective of uniformity, circumstances preclude such joint effort. In such case, GSA will be notified of the deviation.

(d) Except as otherwise authorized, when any deviation in a contract form provision is authorized, physical change may not be made in the printed form but shall be made by appropriate provision in the schedule, specifications, or continuation sheet, as provided in agency procedures.

Subpart 1–1.1 [Reserved]

Subpart 1–1.2—Definition of Terms

§ 1–1.201 Definitions.

For the purposes of this chapter, and unless otherwise indicated, the following terms have the meanings set forth in this subpart.

§ 1–1.202 Executive agency.

"Executive agency" means any executive department (including the Departments of the Army, the Navy, and the Air Force) or any independent establishment in the executive branch of the Government, including any wholly-owned Government corporation.

§ 1–1.203 Federal agency.

"Federal agency" means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction).

§ 1–1.204 Head of the agency.

"Head of the agency" means the Secretary, Attorney General, Postmaster General, Administrator, Governor, Chairman, or other chief official of an executive agency, unless otherwise indicated, including any assistant chief official of an executive agency and, for the military departments, the Under Secretary and any Assistant Secretary of the Departments of the Army, Navy, and Air Force.

§ 1–1.205 Procuring activity.

"Procuring activity" means the organizational element of an executive agency which has responsibility to contract for the procurement of personal property and nonpersonal services (including construction).

§ 1–1.206 Head of the procuring activity

"Head of the procuring activity" means that official, intermediate between the head of the agency and the contracting officer, who has the responsibility for supervision and direction of the procuring activity.

§ 1–1.207 Contracting officer.

"Contracting officer" means an official designated to enter into or administer contracts and make related determinations and findings.

§ 1–1.208 Contract.

"Contract" means establishment of a binding legal relation basically obligating the seller to furnish personal property or nonpersonal services (including construction) and the buyer to pay therefor. It includes all types of commitments which obligate the Government to an expenditure of funds and which, except as otherwise authorized, are in writing. In addition to a two-signature document, it includes all transactions resulting from acceptance of offers by awards or notices of awards; agreements and job orders or task letters issued thereunder; letter contracts; letters of intent; and orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance. It also includes contract modifications.

§ 1–1.209 Procurement.

"Procurement" means the acquisition (and directly related matters), from non-Federal sources, of personal property and nonpersonal services (including construction) by such means as purchasing, renting, leasing, contracting, or bartering, but not by seizure, condemnation, donation, or requisition.

§ 1–1.210 [Reserved]

§ 1–1.211 [Reserved]

§ 1–1.212 [Reserved]

§ 1–1.213 [Reserved]

§ 1–1.214 [Reserved]

§ 1–1.215 Government instrumentality.

"Government instrumentality" means any of the following:

(a) An instrumentality of the U.S. Government.

(b) An agency or instrumentality of a State or local government thereof, possession, or Puerto Rico.

(c) An agency or instrumentality of a foreign government.

§ 1–1.216 United States.

"United States", when used in a geographic sense, means the States and the District of Columbia.

§ 1–1.217 Possessions.

"Possessions" includes the Virgin Islands, the Canal Zone, Guam, American Samoa, Wake Island, Midway Island, and the guano islands, but does not include the Commonwealth of Puerto Rico.

§ 1–1.218 Negotiation.

"Negotiation" means the procedure for making contracts without formal advertising.

§ 1–1.219 Contract modification.

"Contract modification" means any written alteration in the specifications, delivery point, rate of delivery, contract period, price, quantity, or other contract provision of an existing contract, whether accomplished by unilateral action in accordance with a contract provision or by mutual action of the parties to the contract. It includes (a) bilateral actions, such as supplemental agreements and amendments, and (b) unilateral actions, such as change orders, notices of termination, and notices of the exercise of an option.

§ 1–1.220 Procurement item.

"Procurement item" means any personal property or nonpersonal service, including construction, alteration, repair, or installation, which is the object of procurement.

Subpart 1–1.3—General Policies

§ 1–1.301 Methods of procurement.

§ 1–1.301–1 Competition.

All purchases and contracts, whether by formal advertising or by negotiation, shall be made on a competitive basis to the maximum practicable extent.

§ 1–1.301–2 Formal advertising.

Contracts for property and services shall be made by formal advertising in all cases in which the use of such method is feasible and practicable under the existing conditions and circumstances. Procurement by formal advertising shall be in accordance with detailed requirements and procedures set forth in Part 2 of this chapter.

§ 1–1.301–3 Negotiation.

If the use of formal advertising is not feasible and practicable, purchases and contracts for property and services may be negotiated in accordance with the detailed requirements and procedures set forth in Part 3 of this chapter.

§ 1–1.302 Procurement sources.

§ 1–1.302–1 General.

(a) Before taking procurement action, in accordance with this chapter, agencies shall have complied with applicable laws and regulations relative to obtaining supplies or services from Government sources and from contracts of other Government agencies. These include excess and surplus stocks in the hands of any Government agency, Federal Supply Schedules, General Services Administration Stores Stock, Federal Supply Service Consolidated Purchase Programs, Federal Prison Industries, Inc., and National Industries for the Blind.

(b) Irrespective of whether the procurement of supplies or services from sources outside the Government is to be effected by formal advertising or by negotiation, competitive proposals ("bids" in the case of procurement by formal advertising, "proposals" in the case of procurement by negotiation) shall be solicited from all such qualified sources as are deemed necessary by the contracting officer to assure such full and free competition as is consistent with the procurement of types of supplies and services necessary to meet the requirements of the agency concerned.

§ 1–1.302–2 Production and research and development pools.

(a) *Description.* A production or research and development pool is a group of concerns (1) which have associated together for the purpose of obtaining and performing jointly, or in conjunction with each other, contracts for supplies or services, or for research and development, for defense use or to effectuate the purposes of the Small Business Act; (2) which have entered into a pool agreement governing their organization, relationship, and procedure; and (3) whose agreement has been approved either in accordance with section 708 of the Defense Production Act of 1950, as amended (Defense Production Pool), or in accordance with sections 9(d) or 11 of the Small Business Act (Small Business Pool). Pool participants are exempt from the "manufacturer or regular dealer" requirement of the Walsh-Healey Public Contracts Act. (See subpart 1–12.6.)

(b) *General rule.* Except as provided in this § 1–1.302–2, a pool shall be treated for purposes of Government procurement on exactly the same basis as any other prospective or actual contractor.

(c) *Ascertainment of status.* The contracting officer is responsible for ascertaining whether a group of firms seeking to do business with the Government is a pool. In ascertaining the status of a group representing that it is a pool, contracting officers may rely on a copy of the Small Business Administration (SBA) or the Office of Emergency Planning (OEP) notification of approval of the pool. If the contracting officer has any question as to whether a given pool has been approved, he shall consult the regional office of the SBA. Each executive agency should expeditiously disseminate to appropriate contracting officers information received from SBA or OEP concerning the approval of production pools.

(d) *Contracting with pools.*

(1) A bid or proposal of a pool is not eligible for award to the pool unless submitted either by the pool in its own name or by an individual member expressly disclosing that it is on behalf of the pool. Except as to contracts to be awarded to incorporated pools, the contracting officer shall prior to award to a pool require to be deposited with him a

certified copy of a power of attorney from each member of the pool who is to participate in the performance of the contract authorizing an agent to execute the bid, proposal, or contract on behalf of such member. A copy of each such power of attorney shall be appended to each executed copy of the contract retained by the Government.

(2) Membership in a pool shall not of itself preclude individual members from submitting bids or proposals as individuals on appropriate procurements. Bids or proposals submitted by an individual member of a pool shall not be considered when the individual member has participated in the bid or proposal submitted by the pool.

(e) *Responsibility of pool member.* Where a member of a production pool has submitted a bid or proposal in its own name, the pool agreement shall be considered in determining the pool member's responsibility purusant to § 1–1.310.

§ 1–1.303 Approval signatures.

Approval signatures on contracts or purchase authorizations should be minimized to the greatest practical extent and, in the event that multiple approval signatures are required, they should, where possible, be obtained concurrently.

§ 1–1.304 [Reserved]

§ 1–1.305 Specifications.[1]

"Specification," as used in this § 1–1.305, is a clear and accurate description of the technical requirements for a material, product, or service, including the procedure by which it will be determined that the requirements have been met. Specifications for items or materials contain also preservation, packaging, packing, and marking requirements. The identification of categories and intended use of such specifications are as follows:

(a) *Federal.* A specification covering those materials, products, or services, used by or for potential use of two or more Federal agencies (at least one of which is a civil agency), or new items of potential general application, promulgated by the General Services Administration and mandatory for use by all executive agencies.

[1] Other instructions concerning the use of specifications that are of interest and applicable to executive agencies, but which are of no interest to the public, are contained in General Services Administration Regulation 1–VI, Part 2.

(b) *Interim Federal.* A potential Federal specification issued in interim form, for optional use by agencies. Interim amendments to Federal Specifications are included in this definition.

(c) *Military (MIL).* A specification issued by the Department of Defense, used solely or predominantly by and mandatory on military activities. (This definition includes both fully coordinated and limited coordination military specifications.)

(d) *Departmental.* A specification developed and prepared by, and of interest primarily to a particular Federal civil agency, but which may be of use in procurement by other Federal agencies.

§ 1–1.305–1 Mandatory use of Federal Specifications.

Federal Specifications shall be used by all executive agencies, including the Department of Defense, in the procurement of supplies and services covered by such specifications, except as provided in §§ 1–1.305–2 and 1–1.305–3.

§ 1–1.305–2 Exceptions to mandatory use of Federal Specifications.

Federal Specifications need not be used under the following circumstances:

(a) The purchase is required under a public exigency and a delay would be involved in using the applicable specification to obtain agency requirements.

(b) The total amount of the purchase does not exceed $2,500. (Multiple small purchases of the same item shall not be made for the purpose of avoiding the intent of this exception.)

(c) The purchase involves items of construction for new processes, new installations of equipment, or items for experiment, test, or research and development, until such time as specifications covering them are issued or it is determined by the General Services Administration, and the procuring agencies notified, that further deviations from the Federal Specifications will not be permitted: *Provided,* That, in connection with such deviations, existing Federal Specifications shall be used to the extent that they are applicable.

(d) The purchase involves spare parts, components, or materials required for repair or maintenance of existing equipment, or for similar items required for maintenance or operation of existing facilities or installations: *Provided,* That existing Federal Specifications shall be used to the extent that they are applicable.

(e) The items are purchased in foreign markets for use of overseas activities of agencies.

(f) An Interim Federal Specification is used by an agency in lieu of the Federal Specification.

(g) Where otherwise authorized by law.

§ 1–1.305–3 Deviations from Federal Specifications.

When the essential needs of an agency are not adequately covered by an existing Federal Specification, and the proposed purchase does not come within the exceptions described in § 1–1.305–2, the agency may authorize deviations from the Federal Specification; provided, that:

(a) Requirements of existing Federal Specifications shall be used to the maximum extent practicable.

(b) Each agency taking such deviations shall establish procedures whereby a designated official having substantial procurement responsibility shall be responsible for assuring that:

(1) Federal Specifications are used, and provisions for exceptions and deviations are complied with;

(2) Justifications for exceptions and deviations are subject to competent review before authorization, and that such justifications can be fully substantiated if post audit is required;

(3) Major or repeated deviations are not taken except as prescribed in this § 1–1.305–3; and

(4) Notification or recommendation for change in the specification is sent promptly to the General Services Administration by the designated official or subdivision at the agency level, through established agency channels, when—

(i) Deviations taken are of a major nature such as to result in the entrance of a new item into the supply system of the agency as evidenced by the development of a new item identification; or

(ii) A deviation is taken repeatedly.

(5) Notification or recommendation for change in the specification shall be submitted, in duplicate, to the General Services Administration, Federal Supply Service, Washington, D.C. 20405. It shall include a statement of the deviations authorized by the agency, with justification therefor, and, where applicable, recommendation for revision or amendment of the specification.

(c) Deviations taken and reported by the agency in accordance with § 1–1.305–3(b) may not be continued except under the following conditions:

(1) Upon notification by an agency that major or repeated deviations have been taken and where no recommendation for change in the specification is made by the agency, the General Services Administration will notify the agency as to whether such deviations may be continued in subsequent procurement. In cases where deviations are not approved and where procurement by the agency has progressed to a point where it would be impracticable to amend or cancel the action, such action may be completed, but the deviation shall not be authorized by the agency in subsequent procurement.

(2) Where an agency has recommended changing the specification consistent with the deviations it has taken and reported, those deviations may be continued until such time as the recommended change is coordinated and incorporated in the specification; provided, that where coordination with Federal agencies and industry, as applicable, does not result in acceptance of the change, such deviations shall not be authorized by the agency in subsequent procurement.

§ 1–1.305–4 Optional use of Interim Federal Specifications.

Interim Federal Specifications are for optional use. All agencies are urged to make maximum use of Interim Federal Specifications and to submit statements of suggested changes to the assigned agency for consideration in further development of the specifications for promulgation as Federal Specifications.

§ 1–1.305–5 Use of Federal and Interim Federal Specifications in Federal construction contracts.

When material, equipment, or services for which a Federal or Interim Federal Specification is available are specified in connection with Federal construction, the Federal or Interim Federal Specification shall be made a part of the specification for the construction contract, subject to the provisions in § 1–1.305.

§ 1–1.305–6 Military and departmental specifications.

If no Federal Specification is available, existing Interim Federal, military, and departmental specifications which are listed in the Index of Federal Specifications and Standards should be considered and, wherever practicable, used by any agency having need therefor, consistent with the agency's procedures establishing priority for use of such specifications.

§ 1–1.306 Standards.[1]

"Standards," as used in this § 1–1.306, are descriptions which establish engineering or technical limitations and applications for materials, processes, methods, designs, or drafting room and other engineering practices, or any related criteria deemed essential to achieve the highest practical degree of uniformity in materials or products, or interchangeability of parts used in those products; and which may be used in specifications, invitations for bids, proposals, and contracts. The identification of the categories and intended use of such standards are as follows:

(a) *Federal Standard.* A standard promulgated by the General Services Administration, mandatory for use by all executive agencies, including the Department of Defense.

(b) *Interim Federal Standard.* A standard intended for final processing as a new or revised Federal Standard, issued in interim form for optional use by executive agencies.

(c) *Military (MIL) Standard.* A standard issued by the Department of Defense used solely or predominantly by and mandatory on military activities. This definition includes both fully coordinated and limited coordination military standards.

(d) *Departmental Standards.* A standard developed and prepared by, and of interest primarily to, a particular executive civilian agency, but which may be used in procurement by other agencies.

[1] Other instructions concerning the use of standards that are of interest and applicable to executive agencies, but which are of no interest to the public, are contained in General Services Administration Regulation 1–VI, Part 2.

§ 1–1.306–1 Mandatory use and application of Federal Standards.

Federal Standards shall be used by all executive agencies, including the Department of Defense. Exceptions to this mandatory use requirement are as follows:

(a) The exceptions in § 1–1.305 relating to the mandatory use of Federal Specifications are for application to the use of Federal Standards.

(b) In a specific case or class of cases an executive agency may be granted an exception by the General Services Administration on submission of an adequate justification therefor.

§ 1–1.307 Purchase descriptions.

§ 1–1.307–1 Applicability.

(a) Purchase descriptions may be used in the procurement of supplies or services (excluding construction) only when the use of formal (including interim and other temporary) Government specifications and standards to describe such supplies or services is not required under applicable regulations. (See §§ 1–1.305 and 1–1.306.) However, where the use of a formal specification or standard is required, use of supplementary descriptive information which is consistent with the specification or standard is permissible.

(b) Purchase descriptions used in competitive procurements shall not specify a product having features which are peculiar to the product of one manufacturer, producer, or distributor, and thereby preclude consideration of a product of another company, unless it has been determined that those particular features are essential to the Government's requirements, and that similar products of other companies lacking those features would not meet the minimum requirements for the item.

(c) Purchase descriptions, as well as other forms of specifications, must accurately reflect the needs of the Government.

§ 1–1.307–2 General requirements.

Except as otherwise provided in §§ 1–1.307–3 and 1–1.307–4, purchase descriptions shall clearly and accurately describe the technical requirements or desired performance characteristics of the supplies or services to be procured; and, when appropriate, the testing procedures which will be used in determining whether such requirements or characteristics are met. When necessary, preservation, packaging, packing, and marking requirements shall be included. Purchase descriptions may contain references to formal Government specifications and standards which are to form a portion of the purchase description.

§ 1–1.307–3 Commercial, and State and local government specifications and standards.

Purchase descriptions may include or consist of references to specifications and standards issued, promulgated, or adopted by technical societies or associations, or State and local governments, if such specifications and standards (a) are widely recognized and used in commercial practice, (b) conform to the requirements of § 1–1.307–2, and (c) are readily available to suppliers of the supplies or services to be procured.

§ 1–1.307–4 Brand name products or equal.

(a) Purchase descriptions which contain references to one or more brand name products followed by the words "or equal" may be used only in accordance with this § 1–1.307–4 and §§ 1–1.307–5 through 1–1.307–9. The term "brand name product" means a commercial product described by brand name and make or model number or other appropriate nomenclature by which such product is offered for sale to the public by the particular manufacturer, producer, or distributor. Where feasible, all known acceptable brand name products should be referenced. Where a "brand name or equal" purchase description is used, prospective contractors must be given the opportunity to offer products other than those specifically referenced by brand name if such other products will meet the needs of the Government in essentially the same manner as those referenced.

(b) "Brand name or equal" purchase descriptions should set forth those salient physical, functional, or other characteristics of the referenced products which are essential to the needs of the Government, contain the following information to the extent available, and include such other information as is necessary to describe the item required:

(1) Complete common generic identification of the item required.

(2) Applicable model, make, or catalog number for each brand name product referenced, and identity of the commercial catalog in which it appears.

(3) Name of manufacturer, producer, or distributor of each brand name product referenced (and address if company is not well known).

(c) When necessary to describe adequately the item required, an applicable commercial catalog description, or pertinent extracts therefrom, may be used if such description is identified in the invitation for bids or request for proposals as being that of the particular named manufacturer, producer, or distributor.

§ 1–1.307–5 Limitations on use of "brand name or equal" purchase descriptions.

"Brand name or equal" purchase descriptions may be used only under the circumstances in (a) or (b) of this § 1–1.307–5:

(a) When a suitable formal Government specification or standard or industry standardization document approved for agency use is not available, and a purchase description of the type referred to in § 1–1.307–3 is inadequate or unavailable, and a purchase description meeting the general requirements of § 1–1.307–2 cannot be prepared because—

(1) Construction or composition of the product to be procured is too technically involved;

(2) Public exigency or military necessity precludes timely development; or

(3) It is impracticable or uneconomical to prepare a purchase description.

(b) When purchasing items for authorized resale, except military clothing.

(c) The product to be referenced must, in any event, be regularly offered for sale to the public.

(d) When a "brand name or equal" description is used, a notation shall be made in the case file as to the reasons therefor.

§ 1–1.307–6 Invitation for bids, "brand name or equal" descriptions.

(a) Except as provided in (b) of this § 1–1.307–6 when a "brand name or equal" purchase description is included in an invitation for bids:

(1) The following shall be inserted after each item so described in the invitation, for completion by the bidder—

Bidding on:
Manufacturer's Name _____
Brand _____
No. _____

(2) In addition, the following clause shall be included in the invitation:

BRAND NAME OR EQUAL

(As used in this clause, the term "brand name" includes identification of products by make and model.)

(a) If items called for by this Invitation for Bids have been identified in the schedule by a "brand name or equal" description, such identification is intended to be descriptive, but not restrictive, and is to indicate the quality and characteristics of products that will be satisfactory. Bids offering "equal" products will be considered for award if such products are clearly identified in the bids and are determined by the Government to be equal in all material respects to the brand name products referenced in the Invitation for Bids.

(b) Unless the bidder clearly indicates in his bid that he is offering an "equal" product, his bid shall be considered as offering a brand name product referenced in the Invitation for Bids.

(c)(1) If the bidder proposes to furnish an "equal" product, the brand name, if any, of the product to be furnished shall be inserted in the space provided in the Invitation for Bids, or such product shall be otherwise clearly identified in the bid. The evaluation of bids and the determination as to equality of the product offered shall be the responsibility of the Government and will be based on information furnished by the bidder or identified in his bid as well as other information reasonably available to the purchasing activity. CAUTION TO BIDDERS. The purchasing activity is not responsible for locating or securing any information which is not identified in the bid and reasonably available to the purchasing activity. Accordingly, to insure that sufficient information is available, the bidder must furnish as a part of his bid all descriptive material (such as cuts, illustrations, drawings, or other information) necessary for the purchasing activity to (i) determine whether the product offered meets the requirements of the Invitation for Bids and (ii) establish exactly what the bidder proposes to furnish and what the Government would be binding itself to purchase by making an award. The information furnished may include specific references to information previously furnished or to information otherwise available to the purchasing activity.

(2) If the bidder proposes to modify a product so as to make it conform to the requirements of the Invitation for Bids, he shall (i) include in his bid a clear description of such proposed modifications and (ii) clearly mark any descriptive material to show the proposed modifications.

(3) Modifications proposed after bid opening to make a product conform to a brand name product referenced in the Invitation for Bids will not be considered.

(b) Where a component part of an end item is described in the invitation for bids by a "brand name or equal" purchase description and the contracting officer determines that application of the clause in (a)(2) of this § 1-1.307-6 to such component part would be impracticable, the requirements of (a) (1) and (2) of this § 1-1.307-6 shall not apply with respect to such component part. In such cases, if the clause is included in the invitation for bids for other reasons, there also shall be included in the invitation a statement identifying either the component parts (described by "brand name or equal" descriptions) to which the clause applies or those to which it does not apply. This paragraph (b) also applies to accessories related to an end item where a "brand name or equal" purchase description of the accessories is a part of the description of an end item.

(c) When an invitation for bids contains "brand name or equal" purchase descriptions, bidders who offer brand name products referenced in such descriptions shall not be required to furnish bid samples of the referenced brand name products; however, invitations for bids may require the submission of bid samples in the case of bidders offering "or equal" products.

§ 1-1.307-7 Bid evaluation and award, "brand name or equal" descriptions.

(a) Bids offering products which differ from brand name products referenced in a "brand name or equal" purchase description shall be considered for award where the contracting officer determines in accordance with the terms of the clause in § 1-1.307-6(a)(2) that the offered products are equal in all material respects to the products referenced. Bids shall not be rejected because of minor differences in design, construction, or features which do not affect the suitability of the products for their intended use.

(b) Award documents shall identify, or incorporate by reference an identification of, the specific products which the contractor is to furnish. Such identification shall include any brand name and/or make or model number, descriptive material, and any modifications of brand name products specified in the bid. Included in this requirement are those instances where (1) the description of the end item contains "brand name or equal" purchase descriptions or component parts or of accesories related to the end item and (2) the clause in § 1-1.307-6(a)(2) was applicable to such component parts or accessories (see § 1-1.307-6(b)).

§ 1-1.307-8 Procedure for negotiated procurements and small purchases.

(a) The policies and procedures prescribed in §§ 1-1.307-6 and 1-1.307-7 for formally advertised procurements shall be generally applicable to negotiated procurements.

(b) The clause in § 1-1.307-6(a)(2) may be adapted for use in negotiated procurements. If use of the clause is not practicable (as may be the case in exigency purchases), suppliers shall be suitably informed that proposals offering products different from the products referenced by brand name will be considered if the contracting officer determines that such offered products are equal in all significant and material respects to the products referenced.

(c) In small purchases within open-market limitations, such policies and procedures shall be applicable to the extent practicable.

§ 1-1.307-9 Inspection and acceptance.

Inspection and acceptance of deliveries shall be made on the basis of the item described in the notice of award and/or contract.

§ 1-1.308 [Reserved]

§ 1-1.309 [Reserved]

§ 1-1.310 Responsible prospective contractor.

§ 1-1.310-1 Scope.

Section 1-1.310 prescribes policy and procedures governing executive agencies in determining, before award, whether prospective contractors for furnishing the Government supplies or nonpersonal services (including construction) qualify as responsible.

§ 1-1.310-2 General.

The award of contracts to bidders who are not responsible is a disservice to the Government, which may, by such awards, be denied acceptable supplies or services within the time required. It frequently is inequitable to the contractors themselves, who may suffer hardship, sometimes even business failure, as a result of defaults, deductions, and rejections because of inability to meet contract requirements. Moreover, such awards are unfair to other competing bidders, capable of performance, and discourage them from bidding on future procurements. It is essential, therefore, that precautions be taken to award contracts only to reliable and capable bidders who can reasonably be expected to comply with contract requirements.

§ 1-1.310-3 Applicability.

This § 1-1.310 is applicable to all procurements made by executive agencies in the United States, its possessions, and Puerto Rico and, to the extent practicable, in other places. It is not applicable to orders placed under existing Government contracts, or to procurements from: (a) other governments (foreign, State, or local) or their instrumentalities; (b) other United States Government departments and agencies or their instrumentalities (such as Federal Prison Industries, Inc.); and (c) National Industries for the Blind.

§ 1-1.310-4 General policy.

It is the policy that contracts shall be awarded only to responsible prospective contractors. A "responsible prospective contractor" is one which is found by the contracting officer to meet the minimum standards set forth in § 1-1.310-5 and such additional standards as may be prescribed for specific procurements by the agency concerned.

§ 1-1.310-5 Standards.

(a) In order to qualify as responsible, a prospective contractor must, in the opinion of the contracting officer, meet the following standards as they relate to the particular procurement under consideration:

(1) Has adequate financial resources for performance, or has the ability to obtain such resources as required during performance;

(2) Has the necessary experience, organization, technical qualifications, skills, and facilities, or has the ability to obtain them (including probable subcontractor arrangements);

(3) Is able to comply with the proposed or required time of delivery or performance schedule;

(4) Has a satisfactory record of integrity, judgment, and performance (contractors which are seriously delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall, in the absence of evidence to the contrary or compelling circumstances, be presumed to be unable to fulfill this requirement);

(5) Appear to be able to conform to the requirements of the Equal Opportunity Clause (see § 1–12.803–2);

(6) Is otherwise qualified and eligible to receive an award under applicable laws and regulations; e.g., Subpart 1–12.6.

(b) Acceptable evidence of "ability to obtain" financial resources, experience, organization, technical qualifications, skills, and facilities (see (a) (1) and (2) of this § 1–1.310–5), generally shall be a firm commitment or arrangement for the rental, purchase, or other acquisition thereof.

§ 1–1.310–6 Determination of responsibility.

(a) No contract shall be awared to any person or firm unless the contracting officer has first determined that such person or firm is responsible within the meaning of §§ 1–1.310–4 and 1–1.310–5. The signing of a contract shall be deemed to be a certification by the contracting officer that he has determined that the prospective contractor is responsible with respect to that contract.

(b) In any case where the procurement exceeds $10,000 and the contracting officer (or contracting agency) considers such a statement advisable for justification or other reasons, the contracting officer shall prepare, sign, and place in the contract file a statement of the facts on which the determination of responsibility was based. Relevant factors for consideration in determining whether such a statement is advisable would include the value, importance, or technical aspects of the procurement, or the fact that a pre-award on-site evaluation was considered necessary and that it was made. Any supporting documents or reports, including reports of pre-award on-site evaluation and any information to support determinations of responsibility of subcontractors, should be filed with the statement.

§ 1–1.310–7 Information regarding responsibility.

Before making a determination of responsibility, the contracting officer shall have sufficient current information to satisfy himself that the prospective contractor meets the standards in § 1–1.310–5. Information from the following sources should be utilized before considering making a pre-award on-site evaluation:

(a) Information from the prospective contractor, including representations and other data contained in bids and proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements.

(b) Other existing information within the agency, including financial data, the list of debarred and ineligible bidders (see Subpart 1–1.6), and records concerning contractor performance.

(c) Publications, including credit ratings and trade and financial journals.

(d) Other sources, including banks, other financial companies, and Government departments and agencies.

§ 1–1.310–8 Capacity and credit of small business concerns.

In the case of a prospective contractor which is a small business concern, if the contracting officer is not satisfied that the prospective contractor meets the standards in § 1–1.310–5 only because of the lack of adequate capacity or credit, he shall, before making a responsibility determination, comply with the requirements concerning Certificates of Competency issued by the Small Business Administration (see Subpart 1–1.7).

§ 1–1.310–9 Pre-award on-site evaluation.

(a) A pre-award on-site evaluation is an inspection of facilities and equipment with which a prospective contractor proposes to perform a contract, including interviews with contractor personnel. It is made at the direction of the contracting officer, generally by Government specialists, to provide needed responsibility information.

(b) Pre-award on-site evaluations need normally not be performed when the information sources stated in § 1–1.310–7 yield sufficient data to enable a contracting officer to make a determination regarding the responsibility of a prospective contractor. Generally, pre-award on-site evaluations are not necessary in connection with contracts of less than $10,000.

(c) Pre-award on-site evaluations shall cover only those standards or portions thereof concerning which information available (from the sources listed in § 1–1.310–7) appears to be not current, sufficient, or reliable.

§ 1–1.310–10 Performance records.

Such records of contractor past performance shall be maintained as are considered necessary for the use of contracting officers in placing new procurements. Records in more complete detail should be maintained on contractors which have indicated by past actions that the character of their performance on contracts is questionable, and on new contractors whose reliability has not been established.

§ 1–1.310–11 Subcontractor responsibility.

Generally, the evaluation of the qualifications of subcontractors is a function of the prime contractor. However, to the extent that a prospective contractor cannot meet the standard in § 1–1.310–5 (a)(2) except by means of proposed subcontracting, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable purchasing and subcontracting system or prospective major subcontractors are determined by the contracting officer to satisfy that standard.

§ 1–1.311 Priorities, allocations, and allotments.

In the interest of maintaining a minimum priorities and allocations system as a mobilization preparedness measure, agencies shall require contractors to use ratings and allotment authority to support defense needs to the extent required by regulations of the Business and Defense Services Administration, Department of Commerce.

§ 1–1.312 [Reserved]

§ 1–1.313 Records of contract actions.

Each contract file should contain documentation of actions taken with respect to each contract, including final disposition. To the extent that retained copies of documents do not represent all actions taken, suitable memoranda or a summary statement of such undocumented actions should be prepared promptly and be retained in the contract file.

§ 1–1.314 Solicitations for informational or planning purposes.

It is the general policy of the Government to solicit bids, proposals, or quotations only where there is a definite intention to award a contract. However, in some cases requests for informational or planning purposes may be justified. In such cases the request shall clearly state its purpose, explaining that the Government does not intend to award a contract on the basis of the request, or otherwise pay for the information solicited; but such statement does not prohibit the allowance, in accordance with § 1–15.205–3, of the cost of preparing such quotations.

§ 1–1.315 Use of liquidated damages provisions in procurement contracts.

§ 1–1.315–1 General.

This § 1–1.315 prescribes (a) policy which shall govern executive agencies in the use of liquidated damages provisions in contracts for supplies and services, including construction, entered into by formal advertising or by negotiation, and (b) a provision which shall be inserted in contracts for supplies and services, other than construction, when liquidated damages are stipulated.

§ 1–1.315–2 Policy.

(a) Liquidated damages provisions may be used only where both (1) the time of delivery or performance is such an important factor in the award of the contract that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent, and (2) the extent or amount of such damage would be difficult or impossible of ascertainment or proof.

(b) In making decisions as to whether liquidated damages provisions are to be used, consideration should be given to their probable effect on such matters as pricing, competition, and the costs and difficulties of contract administration, as well as the availability of provision elsewhere in the contract for recovery of excess costs in termination cases.

(c) The rate of liquidated damages stipulated must be reasonable in relation to anticipated damages, considered on a case-by-case basis, since liquidated dam-

ages fixed without any reasonable reference to probable damages may be held to be not compensation for anticipated damages caused by delay, but a penalty, and therefore unenforceable.

(d) Where a liquidated damages provision is included in a contract and a basis for termination for default exists, appropriate action should be taken expeditiously by the Government to obtain performance by the contractor or to exercise its right to terminate as provided in the contract. If delivery or performance is desired after termination for default, efforts must be made to obtain either delivery or performance elsewhere within a reasonable time. Efficient administration of contracts containing liquidated damages provisions is imperative to prevent undue loss to defaulting contractors and to protect the interests of the Government.

(e) Whenever any contract includes a provision for liquidated damages for delay, the Comptroller General, on the recommendation of the head of the agency concerned, is authorized and empowered, by law, to remit the whole or any part of such damages as in his discretion may be just and equitable.

§ 1–1.315–3 Contract provisions.

(a) *Contracts for supplies or services.* When a liquidated damages provision is to be used in a contract which is for supplies or services and which includes Standard Form 32, General Provisions (Supply Contract), the following provision shall be inserted in the invitation for bids and an appropriate rate(s) of liquidated damages (determined pursuant to § 1–1.315–2) shall be stipulated:

LIQUIDATED DAMAGES

Article 11(f) of Standard Form 32, General Provisions (Supply Contract), is redesignated as Article 11(g) and the following is inserted as Article 11(f):

(f)(i) In the event the Government exercises its right of termination as provided in paragraph (a) above, the Contractor shall be liable to the Government for excess costs as provided in paragraph (b) above and, in addition, for liquidated damages, in the amount set forth elsewhere in this contract, as fixed, agreed, and liquidated damages for each calendar day of delay, until such time as the Government may reasonably obtain delivery or performance of similar supplies or services.

(ii) If the contract is not so terminated, notwithstanding delay as provided in paragraph (a) above, the Contractor shall continue performance and be liable to the Government for such liquidated damages for each calendar day of delay until the supplies are delivered or services performed.

(iii) The Contractor shall not be liable for liquidated damages for delays due to causes which would relieve him from liability for excess costs as provided in paragraph (c) of this clause.

(b) *Contracts for construction.* Liquidated damages provisions for construction contracts are contained in the Termination for Default-Damages for Delay-Time Extensions clauses of both Standard Form 19, Invitation, Bid, and Award (Construction, Alteration or Repair), and Standard Form 23A, General Provisions (Construction Contract). To make such provisions operative, an appropriate rate(s) of liquidated damages (determined pursuant to § 1–1.315–2) must be stipulated in the invitation for bids.

§ 1–1.316 Time of delivery or performance.

§ 1–1.316–1 Scope and applicability.

This § 1–1.316 prescribes policy and procedure regarding requirements as to time for delivery or performance in contracting for personal property or nonpersonal services. This section does not, however, apply to contracts for construction.

§ 1–1.316–2 General.

(a) The time of delivery or of performance is an important element of a contract and must be clearly set forth in invitations for bids and requests for proposals. Time schedules for delivery or performance shall be designed to meet the requirements of the particular procurement, all relevant factors considered (see § 1–1.316–3), and must be realistic. Schedules which are unreasonably tight or difficult of attainment tend to restrict competition, are inconsistent with small business policies, and may result in higher contract prices. Therefore, before issuing an invitation for bids or request for proposals, the contracting officer shall question any delivery or performance schedule which appears unrealistic and, if necessary, initiate action to make appropriate adjustments.

(b) Where timely delivery or performance is unusually important to the Government, a liquidated damages provision may be used as provided for in § 1–1.315.

(c) Invitations for bids and requests for proposals shall, when appropriate, inform bidders or offerors of the basis on which their bids or proposals will be evaluated with respect to time of delivery or performance.

§ 1–1.316–3 Factors to be considered.

Factors to be considered in establishing delivery or performance schedules may include one or more of the following:

(a) Urgency of need for the property or services.

(b) Production time due to quantity, complexity of design, etc.

(c) Market conditions.

(d) Transportation time.

(e) Industry practices.

(f) Capabilities of small business concerns.

(g) Time for obtaining and evaluating bids or offers, and for awarding contracts.

(h) Time for contractors to comply with any conditions precedent to performance.

(i) Time for the Government to perform its obligations under the contract (e.g., furnishing of Government property to the contractor, approval of preproduction samples, and inspection).

§ 1–1.316–4 Terms.

(a) Delivery schedules may be expressed in terms of—

(1) Specific calendar dates (e.g., on or before July 1, 1960);

(2) Specified periods from date of contract (i.e., from date of award or acceptance by the Government, or from date shown on contract document as effective date of contract); or

(3) Specified periods from date of receipt by contractor of notice of award or acceptance by the Government (including notice by receipt of contract document executed by the Government). The full period which the Government holds out as being available for contract performance should not be curtailed to the prejudice of the contractor by delay in giving notice of award. Accordingly, one of the provisions in (b) or (c) of this § 1–1.316–4 shall be used in advertised procurements and may be suitably modified and used as appropriate in negotiated procurements.

(b) Where the delivery schedule is expressed in terms of specific calendar dates (see (a)(1) of this § 1–1.316–4), invitations for bids shall include one of the following provisions:

(1) The foregoing delivery requirements are based on the assumption that the Government will make award by (procuring activity insert calendar date). Each delivery date in the delivery schedule set forth herein will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to paragraph 8(d) of the Terms and Conditions of the Invitation for Bids, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Therefore, in computing the available time for performance, the bidder should take into consideration the time required for notice of award to arrive through the ordinary mails.

(2) The foregoing delivery requirements are based on the assumption that the successful bidder will receive the notice of award by (procuring activity insert calendar date). The Government will extend each delivery date in the delivery schedule set forth herein by the number of calendar days after the above date that the contractor receives notice of award, if the contractor promptly acknowledges such receipt.

(c) Where the delivery schedule is based on the date of contract (see (a)(2) of this § 1–1.316–4), the invitations for bids shall include the following provision:

Attention is directed to paragraph 8(d) of the Terms and Conditions of the Invitation for Bids, which provides that a written award mailed or otherwise furnished to the successful bidder results in a binding contract. Any award hereunder, or a preliminary notice thereof, will be mailed or otherwise furnished to the bidder the day the award is dated. Therefore, in computing the time available for performance, the bidder should take into consideration the time required for the notice of award to arrive through the ordinary mails. However, a bid offering delivery based on date of receipt by the contractor of the contract or notice of award (rather than contract date) will be evaluated by adding the maximum number of days normally required for delivery of the award through the ordinary mails. If, as so computed, the delivery date offered is later than the delivery date required in the invitation, the bid will be considered nonresponsive and rejected.

(d) Where the delivery schedule is based on the date of the contract (see (a)(2) and (c) of this § 1–1.316–4), the contract, notice of award, acceptance of

proposal, or other contract document executed by the Government shall be mailed or otherwise furnished the contractor on the date shown thereon.

(e) Where the delivery schedule is based on date of receipt by the contractor of notice of award (see (a)(3) of this § 1–1.316–4), or where it is expressed in terms of specific calendar dates on the assumption that notice of award will be received by a specified date (see (b)(2) of this § 1–1.316–4), the notice of award, acceptance of proposal, or other contract document executed by the Government shall be sent by certified mail, return receipt requested, or by any other appropriate method which will provide evidence of the date of receipt.

(f) When the required delivery schedule in the invitation for bids is based on date of the contract (see (a)(2) of this § 1–1.316–4), a bid which offers delivery based on date of receipt by the contractor of the contract or notice of award (see (a)(3) of this § 1–1.316–4)—

(1) Shall be evaluated by adding the maximum number of days normally required for delivery of the notice of award through the ordinary mails; and

(2) If the delivery date offered by the bid (computed in accordance with (f)(1) of this § 1–1.316–4) is later than the delivery date required in the invitation for bids, the bid shall be considered nonresponsive and rejected; but

(3) If award is made under (f)(1) of this § 1–1.316–4, under the terms of the contract the delivery date will be computed on the basis of the number of days after actual receipt by the contractor of the notice of award as specified in the bid.

§ 1–1.316–5 Time of delivery clauses.

(a) Examples of time of delivery clauses for invitations for bids are set forth below. They may be modified, or other clauses may be used, to state particular delivery requirements or any special procedures to be used in the evaluation, rejection, or award process as regards time of delivery. These clauses also may be suitably modified for use in negotiated procurements where appropriate.

(b) The following clause may be used where delivery by a particular time is necessary to meet the Government's requirements:

TIME OF DELIVERY

Delivery is required to be made in accordance with the following schedule:

Item No.	*Quantity*	*Time* [*]
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Bids offering delivery of each quantity within the applicable delivery period specified above will be evaluated equally as regards time of delivery. Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable delivery period specified above will be considered nonresponsive and will be rejected. Where a bidder offers an earlier delivery schedule than that called for above, the Government reserves the right to award either in accordance with the required schedule or in accordance with the schedule offered by the bidder. If the bidder offers no other delivery schedule, the delivery schedule stated above shall apply.

Bidder's Proposed Delivery Schedule

(To Be Completed by Bidder)

Item No.	*Quantity*	*Time* [*]
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*Contracting officer shall insert the appropriate one of the following phrases, in both of the indicated spaces:

(1) "On (on or before) the date(s) specified below."

(2) "Within the number of days stated below after the date of contracts."

(3) "Within the number of days stated below after the date of receipt of a written notice of award."

(4) "Within the periods specified below." (NOTE: When this phrase is inserted, the wording "during the month(s) of _____" or "not sooner than _____ and not later than _____" should be used to specify the periods.)

(c) The following clause may be used where delivery by a certain time is desired although not essential, but delivery by a specified later time is necessary to meet the Government's requirements:

TIME OF DELIVERY

Delivery is desired by the Government in accordance with the following schedule:

Item No.	*Quantity*	*Time* [*]
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----------	----------	----------
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If the bidder is unable to meet the above delivery schedule, he may, without prejudice to the evaluation of his bid, set forth his Proposed Delivery Schedule below; but such delivery schedule must not extend the delivery period beyond the time for delivery called for in the following required delivery schedule:

REQUIRED DELIVERY SCHEDULE

Item No.	*Quantity*	*Time* [*]
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----------	----------	----------
----------	----------	----------

Bids offering delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable required delivery period specified above will be considered nonresponsive and will be rejected.

If the bidder does not propose a different delivery schedule, the Government's desired delivery schedule shall apply.

Bidder's Proposed Delivery Schedule

(To Be Completed by Bidder)

Item No.	*Quantity*	*Time* [*]
----------	----------	----------
----------	----------	----------
----------	----------	----------

*Contracting officer shall insert the appropriate one of the following phrases, in each of the three indicated spaces:

(1) "On (on or before) the date(s) specified below."

(2) "Within the number of days stated below after date of contract."

(3) "Within the number of days stated below after the date of receipt of a written notice of award."

(4) "Within the periods specified below." (NOTE: When this phrase is inserted, the wording "during the month(s) of _____" or "not sooner than _____ and not later than _____" should be used to specify the periods.)

§ 1–1.317 Noncollusive bids and proposals.

(a) In order to promote full and free competition for Government contracts, the following certification shall be included in all (1) invitations for bids, and (2) requests for proposals or quotations, other than for small purchases made in accordance with Subpart 1–3.6 and other than requests for technical proposals in connection with two-step formal advertising, involving firm fixed-price contracts and fixed-price contracts with escalation:

CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

(a) By submission of this bid or proposal, each bidder or offeror certifies, and in the case of a joint bid or proposal each party thereto certifies as to its own organization, that in connection with this procurement:

(1) The prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or offeror or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the bidder or offeror and will not knowingly be disclosed by the bidder or offeror prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or offeror or to any competitor; and

(3) No attempt has been made or will be made by the bidder or offeror to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.

(b) Each person signing this bid or proposal certifies that:

(1) He is the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein and that he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above; or

(2) (i) He is not the person in the bidder's or offeror's organization responsible within that organization for the decision as to the prices being bid or offered herein but that he has been authorized in writing to act as agent for the persons responsible for such decision in certifying that such persons have not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above, and as their agent does hereby so certify; and (ii) he has not participated, and will not participate, in any action contrary to (a)(1) through (a)(3) above.

(c) This certification is not applicable to a foreign bidder or offeror submitting a bid or proposal for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(d) A bid or proposal will not be considered for award where (a)(1), (a)(3), or (b) above has been deleted or modified. Where (a)(2) above has been deleted or modified, the bid or proposal will not be considered for award unless the bidder or offeror furnishes with the bid or proposal a signed statement which sets forth in detail the circumstances of the disclosure and the head of the agency, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

(b) The authority to make the determination described in paragraph (d) of the above certification shall not be delegated to an official below the level of the head of a procuring activity of the agency.

(c) Where a certification is suspected of being false or there is indication of collusion, the matter shall be processed in accordance with Subpart 1-1.9 and appropriate agency procedures. For rejection of bids which are suspected of being collusive and for the negotiation of procurements subsequent to such rejection, see §§ 1-2.404-1(b)(6) and 1-3.214.

§ 1-1.318 Contracting Officer's decision under a disputes clause.

(a) When a final decision of the Contracting Officer concerns a dispute that is or may be subject to the Disputes clause, a paragraph substantially as follows shall be included in the decision:

This decision is made in accordance with the Disputes clause and shall be final and conclusive as provided therein, unless, within thirty days from the date of receipt of this decision, a written notice of appeal (in triplicate) addressed to the _____
_____
[Title of the head of the agency]
is mailed or otherwise furnished to the Contracting Officer. The notice of appeal, which is to be signed by you as the contractor or by an attorney acting on your behalf, and which may be in letter form, should indicate that an appeal is intended, should refer to this decision and should identify the contract by number. The notice of appeal may include a statement of the reasons why the decision is considered to be erroneous.

(b) A copy of each contracting officer's decision shall be furnished to the contractor by certified mail, return receipt requested, or by any other method which provides evidence of the date of receipt of the decision by the contractor.

§ 1-1.319 Procurement of items using jewel bearings.

(a) *General.* In order to maintain a jewel bearing production facility in the United States as a part of the mobilization base, the Government owns and, through a contractor, operates the Turtle Mountain Jewel Bearing Plant at Rolla, North Dakota. The Director of the Office of Emergency Planning has requested that agencies use this source in order to promote use of this plant as an established domestic source of jewel bearings. The Joint Economic Committee has also expressed similar interest in this objective.

(b) *Policy and procedure.* Government agency purchases of jewel bearings will be made from the Turtle Mountain Jewel Bearing Plant. In addition, all procurements of items, whether by Government directly or through cost-type contractors acting for the Government, calling for revision of jewel bearings shall provide, in the solicitations and resulting contracts, a requirement that jewel bearings in the quantities, and of the types and sizes necessary for the end items to be supplied under the contract, be purchased from the Turtle Mountain Plant and be incorporated in the delivered items. Subject to the criteria provided in (c), (d), and (e) of this § 1-1.319, except:

(1) When quantity requirements, quality standards, or delivery requirements cannot be satisfied by bearings manufactured at the Turtle Mountain Plant;

(2) For purchases of commercial end items having jeweled components, and the quantities of such end items or components are such that the contracting officer either knows or reasonably expects that all such end items or components are already manufactured and available from the stock of any dealer, wholesaler, distributor, or manufacturer; or

(3) For bearings used in items that are to be procured and used outside the United States, its possessions, and Puerto Rico.

(c) *Provisions in solicitations.* In order to assure that all bidders or offerors are competing on the same basis, it is necessary that the solicitation for items containing jewel bearings clearly state:

(1) The successful contractor will be required to purchase (directly or through subcontractors, as appropriate) Turtle Mountain source bearings at prices established in the U.S. Government Jewel Bearing Price List then in effect or, if not included in such price list, at prices quoted by the Turtle Mountain Plant, and to incorporate such bearings in the items to be delivered; and

(2) Bids or proposals are to be predicated on this requirement.

If after award of the contract, the Turtle Mountain Plant rejects the contractor's order entirely or in part, the contractor shall be required to so notify the contracting officer who will effect an equitable adjustment in the contract price to reflect any costs or savings accruing to the contractor by reason of any price differential for such bearings, pursuant to the clause of this contract entitled "Changes."

(d) *Waiver of use.* To the extent Turtle Mountain bearings are fungible with other bearings and it is not practical or would be costly to segregate jewel bearing inventories or work in process for items to be furnished the Government from that to be furnished commercial customers, or for other similar reasons, it may be in the Government's interest to waive the use requirements at the discretion of the contracting officer. No waiver will be granted to prospective contractors prior to award and no assurance will be given prior to award of any prospective contractors that such waiver will be granted after award. Minor inconvenience to contractors alone will not satisfy the need for demonstrating that the Government's interests are served by such waiver. When the use requirement is waived, an equitable adjustment for cost savings resulting therefrom shall be made.

(e) *Minimum purchase and use.* In circumstances where a procurement is not exempt from this procedure but it would be impractical or contrary to the Government's best interest to require actual use of all of the Turtle Mountain bearings required to be purchased, the contracting officer may provide in the solicitation and resulting contract that a minimum fixed percentage of the total bearings requirements be of Turtle Mountain origin, or that Turtle Mountain bearings be purchased for and used in a certain number of the total items to be supplied.

(f) *Contract clause.* In all procurements subject to these procedures, the following clause is required for use:

REQUIRED SOURCE FOR JEWEL BEARINGS

Jewel bearings required in the performance of this contract (whether by the prime contractor or by subcontractors), shall be procured from the Turtle Mountain Jewel Bearing Plant, Rolla, North Dakota, at prices established in the Official U.S. Government Jewel Bearing Price List dated [insert latest effective date] (or, if not included in such price list, at prices quoted by the Turtle Mountain Plant), to the extent that this source can meet the jewel bearing requirements of the Contractor in the performance of this contract. The Contractor agrees that the delivery dates specified for the quantities and types of jewel bearings so ordered will be reasonably related to manufacturing schedules and delivery requirements of this contract. The Contractor agrees to notify the Contracting Officer promptly of the rejection of his purchase order in whole or in part by the Turtle Mountain Plant and further agrees to an equitable adjustment in the contract price pursuant to the "Changes" clause of this contract to reflect any costs or savings to the Contractor resulting from such rejection. The Contractor agrees to incorporate the purchased Turtle Mountain jewel bearings in the items to be delivered under this contract.[1] The requirement for use (but not the requirement for purchase) of such bearings may be waived in the discretion of the Contracting Officer when such waiver is determined by him to be in the Government's interest, and where agreement is reached for an equitable adjustment in the contract price by reason of such waiver.

(End of clause)

[1] Where less than total purchase and usage of Turtle Mountain bearings is to be required, substitute "The Contractor further agrees to purchase and incorporate Turtle Mountain bearings in items to be delivered under this contract equivalent to at least _____ percent of the total quantity of bearings required to perform this contract." (Percentage to be inserted by Contracting Officer.) In lieu of a percentage, the clause may refer to specific quantities of items listed in the schedule for which Turtle Mountain bearings must be purchased and used.

Subpart 1-1.4 [Reserved]

Subpart 1–1.5—Contingent Fees

§ 1–1.500 Scope of subpart.

This subpart prescribes the use by executive agencies of the "covenant against contingent fees" and sets forth the policies, forms, methods, procedure, principles, and standards related thereto. The requirements of this subpart have as their objective the prevention of improper influence in connection with the obtaining of Government contracts, the elimination of arrangements which encourage the payment of inequitable and exorbitant fees bearing no reasonable relationship to the services actually performed, and the prevention of unwarranted expenditure of public funds which inevitably results therefrom. The methods used to achieve these objectives are the requirement for disclosure of the details of arrangements under which agents represent concerns in obtaining Government contracts, and the prohibiting, by use of the covenant against contingent fees, of certain types of contractor-agent arrangements.

§ 1–1.501 Applicability.

The provisions of this subpart apply to all contracts for the procurement of personal property and nonpersonal services, including the procurement of construction. The Criminal Code will apply in any case involving actual criminal conduct.

§ 1–1.502 Improper influence.

The term "improper influence" means influence, direct or indirect, which induces or tends to induce consideration or action by any employee or officer of the United States with respect to any Government contract on any basis other than the merits of the matter.

§ 1–1.503 Covenant.

Executive agencies shall include in every negotiated or advertised contract (except as provided in § 1–16.406) a "covenant against contingent fees" substantially as follows (set forth as article 20 of Standard Form 32, General Provisions (Supply Contract), and Clause 17 of Standard Form 23A, General Provisions (Construction Contract)):

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

§ 1–1.504 General principles and standards applicable to the covenant.

§ 1–1.504–1 Use of principles and standards.

The principles and standards set forth in this subpart are intended to be used as a guide in the negotiation, awarding, administration, and enforcement of Government contracts.

§ 1–1.504–2 Contingent character of the fee.

Any fee whether called commission, percentage, brokerage, or contingent fee, or otherwise denominated, is within the purview of the covenant if, in fact, any portion thereof is dependent upon success in obtaining or securing the Government contract or contracts involved. The fact, however, that a fee of a contingent nature is involved does not preclude a relationship which qualifies under the exceptions to the prohibition of the covenant.

§ 1–1.504–3 Exceptions to the prohibition.

There are excepted from the prohibition of the covenant "bona fide employees" and "bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business."

§ 1–1.504–4 Bona fide employee.

(a) The term "bona fide employee," for the purpose of the exception to the prohibition of the covenant, means an individual (including a corporate officer) employed by a concern in good faith to devote his full time to such concern and no other concern and over whom the concern has the right to exercise supervision and control as to time, place, and manner of performance of work. It is recognized that a concern, especially a small business concern, may employ an individual who represents other concerns. The factors set forth in § 1–1.504–5(b), except (4) thereof, shall be applied to determine whether such an individual comes within the exception to the prohibition of the covenant.

(b) The hiring must contemplate some continuity and it may not be related only to the obtaining of one or more specific Government contracts.

(c) An employee is not "bona fide" who seeks to obtain any Government contract or contracts for his employer through the use of improper influence or who holds himself out as being able to obtain any Government contract or contracts through improper influence.

(d) A person may be a bona fide employee whether his compensation is on a fixed salary basis or, when customary in the trade, on a percentage, commission or other contingent basis, or a combination of the foregoing.

§ 1–1.504–5 Bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.

(a) An agency or agent is not "bona fide" which seeks to obtain any Government contract or contracts for its principals through the use of improper influence or which holds itself out as being able to obtain any Government contract or contracts through improper influence.

(b) In determining whether an agency is a "bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business," the factors set forth below shall be considered. They are necessarily incapable of exact measurement or precise definition and it is neither possible nor desirable to prescribe the relative weight to be given any single factor as against any other factor or as against all other factors. The conclusions to be reached in a given case will necessarily depend upon a careful evaluation of the agreement and other attendant facts and circumstances.

(1) The fees charged should not be inequitable and exhorbitant in relation to the services actually rendered. That is, the compensation should be commensurate with the nature and extent of the services and should not be excessive as compared with the fees customarily allowed in the trade concerned for similar services related to commercial (non-Government) business. In evaluating reasonableness of the fee, there should be considered services of the agent other than actual solicitation, as for example, technical, consultant or managerial services, and assistance in the procurement of essential personnel, facilities, equipment, materials, or subcontractors for performance of the contract.

(2) The selling agency should have adequate knowledge of the products and the business of the concern represented, as well as other qualifications necessary to sell the products or services on their merits.

(3) There should ordinarily be a continuity of relationship between the contractor and the agency. The fact that the agency has represented the contractor over a considerable period of time is a factor for favorable consideration. It is not intended, however, to disqualify newly established contractor-agent relationships where a continuing relationship is contemplated by the parties.

(4) It should appear that the agency is an established concern. The agency may be either one which has been in business for a considerable period of time or a new agency which is a presently going concern and which is likely to continue in business as a commercial or selling agency in the future. The business of the agency should be conducted in the agency name and characterized by the customary indicia of the conduct of a regular business.

(5) The fact that a selling agency confines its selling activities to the field of Government contracts does not, in and of itself, disqualify it under the covenant. The fact, however, that the selling agency is employed to secure business generally, that is, to represent the concern in connection with sales to the Government as well as regular commercial sales to non-Government activities is a factor entitled to favorable consideration in evaluating the case as one coming within the authorized exception. Arrangements confined, however, to obtaining Government contracts, particularly those involving a selling agency organized immediately prior to or during periods of expanded procurement resulting from conditions of national emergency, must be closely scrutinized.

§ 1–1.504–6 Fees for "information."

Contingent fees paid for "information" leading to obtaining a Government

contract or contracts are included in the prohibition and, accordingly, are in breach of the covenant unless the agent qualifies under the exception as a bona fide employee or a bona fide established commercial or selling agency maintained by the contractor for the purpose of securing business.

§ 1–1.505 Representation and agreement required from prospective contractors.

Except as provided in § 1–1.507–3, each executive agency shall inquire of and secure a written representation from prospective contractors as to whether they have employed or retained any company or person (other than a full-time employee working solely for the prospective contractor) to solicit or secure the contract, and shall secure a written agreement to furnish information relating thereto as required by the contracting officer. Where an invitation for bids is issued, this inquiry shall be made (and written representation and agreement secured) by requiring the bidder (or contractor) to check the appropriate box in the following statement (which appears on Standard Form 21, Bid Form (Construction Contract), Standard Form 30, Invitation and Bid (Supply Contract), and Standard Form 33, Invitation, Bid and Award (Supply Contract)) to be included in the invitation or bid form:

The bidder represents: (a) that he ☐ has, ☐ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure this contract, and (b) that he ☐ has, ☐ has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer. (Note: For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Chapter I, Subpart 1–1.5.)

§ 1–1.506 Interpretation of the representation.

(a) For the purpose of the representation and agreement required from the prospective contractor, as described in § 1–1.505, the definition of "bona fide employee" is as specified in § 1–1.504–4.

(b) The fact that the prospective contractor retains a person who does not devote his full time solely to the prospective contractor does not necessarily mean that the relationship involved is in violation of the covenant against contingent fees or that there is any stigma attached to the contractor-agent relationship. It does mean, however, that the prospective contractor must fill out the representation in the affirmative and, as required, furnish information with respect to such employment or retention.

(c) If the representation would otherwise be answered in the affirmative, the fact that the person employed or retained by the bidder or contractor is an attorney, or a public relations consultant, or has any other special or professional title, does not permit answer in the negative.

§ 1–1.507 Use of Standard Form 119.

§ 1–1.507–1 Form prescribed.

Pursuant to the Act and in furtherance of the objectives stated in § 1–1.500, Standard Form 119 (December 1952), Contractor's Statement of Contingent or Other Fees for Soliciting or Securing or Resulting from Award of Contract, is hereby prescribed and shall be used in accordance with the provisions of this subpart. Except as provided in § 1–1.507–3, this form shall be used without deviation by executive agencies whenever either part of the inquiry provided for in § 1–1.505 is answered in the affirmative. The form shall be used also, without deviation, in any other case where an executive agency desires to obtain such information. When, after use of the form, further information is required, it may be obtained in any appropriate manner. Submission of the form shall be required, normally, only of successful bidders and contractors.

§ 1–1.507–2 Statement in lieu of form.

Any bidder or proposed contractor who has previously furnished a Standard Form 119 to the office issuing the invitation or negotiating the contract may be permitted to accompany his bid, or submit in connection with the proposed contract, a signed statement (a) indicating when such completed form was previously furnished, (b) identifying by number the previous invitation or contract in connection with which such form was submitted, and (c) representing that the statements in such previously furnished form are applicable to such subsequent bid or contract. In such case, submission of an additional completed Standard Form 119 need not be required.

§ 1–1.507–3 Exceptions.

The inquiry and agreement specified in § 1–1.505 need not be made and submission of Standard Form 119 need not be requested in connection with the following:

(a) Any advertised contract in which the aggregate amount involved does not exceed $25,000.

(b) Any negotiated contract in which the aggregate amount involved does not exceed, in the case of the Department of Defense, $5,000; in all other cases, $2,500.

(c) Any negotiated contract for perishable subsistence supplies in which the aggregate amount involved does not exceed $25,000

(d) Any contract for services which are required to be performed by an individual contractor in person under Government supervision and paid for on a time basis.

(e) Any contract for public utility services furnished by a public utility company where the utility company's rates for the services furnished are subject to regulation by Federal, State, or other regulatory body and the public utility company is the sole source of supply.

(f) Contracts to be made in foreign countries.

(g) Any other contracts, individually or by class, of the Department of Defense, designated by the Secretary. Reports of any such exceptions shall be filed promptly with the Administrator of General Services.

§ 1–1.508 Enforcement.

§ 1–1.508–1 Failure or refusal to furnish representation and agreement.

Each executive agency shall take the necessary steps to assure that the indicated successful bidder or proposed contractor has furnished a representation (negative or affirmative) and agreement as described in § 1–1.505.

(a) If the indicated successful bidder or proposed contractor makes such representation in the negative, such representation may be accepted and award made or offer accepted in accordance with established procedure.

(b) If the indicated successful bidder or proposed contractor makes such representation in the affirmative, a completed Standard Form 119 shall be requested from the bidder or proposed contractor. In the case of formal advertising, the making of an award in accordance with established procedure need not be delayed pending receipt of the form. In the case of negotiation, if the proposed contractor makes such representation in the affirmative, he shall be required to file a completed Standard Form 119 prior to acceptance of the offer or execution of the contract unless the head of the executive agency concerned, or his authorized representative, considers that the interest of the Government will be prejudiced by the suspension of negotiations pending receipt and consideration of an executed Standard Form 119.

(c) If the indicated successful bidder or proposed contractor fails to furnish the representation and agreement as described in § 1–1.505, such failure shall be considered a minor informality and, prior to award, such bidder or proposed contractor shall be afforded a further opportunity to furnish such representation and agreement. A refusal or failure to furnish such representation and agreement, after such opportunity has been afforded, shall require rejection of the bid or offer.

§ 1–1.508–2 Failure or refusal to furnish Standard Form 119.

If the successful bidder or contractor, upon request, refuses or fails to furnish a completed Standard Form 119, or a statement in lieu thereof as provided in § 1–1.507–2, the executive agency concerned shall take one or more of the following actions, or other action, as may be appropriate:

(a) If an award has not been made or offer accepted, determine whether the bid or offer should be rejected.

(b) If the contract has been awarded or offer accepted, determine what action shall be taken, such as making an independent investigation or considering the eligibility of the contractor as a future contractor in accordance with established procedure.

§ 1–1.508–3 Misrepresentations or violations of the covenant against contingent fees.

In case of misrepresentation, or violation or breach of the covenant against

contingent fees, or some other relevant impropriety, the executive agency concerned shall take one or more of the following actions, or other action, as may be appropriate:

(a) If an award has not been made, or offer has not been accepted, determine whether the bid or offer should be rejected.

(b) If an award has been made or offer has been accepted, take action to enforce the covenant in accordance with its terms; that is, as the best interests of the Government may appear, annul the contract without liability or recover the amount of the fee involved.

(c) Consider the future eligibility as a contractor of the bidder or contractor in accordance with established procedure.

(d) Determine whether the case should be referred to the Department of Justice in accordance with established procedure with respect to determining matters of fraud or criminal conduct.

§ 1–1.509 Preservation of records.

Executive agencies shall preserve, for enforcement or report purposes, at least one executed copy of any representation and completed Standard Form 119 (or statement in lieu of form) together with a record of any other pertinent data, including data as to action taken.

Subpart 1–1.6—Debarred, Suspended, and Ineligible Bidders

§ 1–1.600 Scope of subpart.

This subpart prescribes policies and procedures relating to: (a) The debarment of bidders for cause; (b) the suspension of bidders for cause under prescribed conditions; and (c) the placement of bidders in ineligibility status under section 1 of the Walsh-Healey Public Contracts Act (41 U.S.C. 35). It is directly applicable to executive agencies in negotiated or advertised purchasing and in contracting for the construction, repair, alteration, destruction, or dismantlement of public works or buildings. Other Federal agencies are requested to comply therewith in conducting their purchasing and contracting operations.

§ 1–1.601 General.

Debarment, suspension, and placement in ineligibility status are measures which may be invoked by the Government either to exclude or to disqualify bidders and contractors from participation in Government contracting or subcontracting. These measures should be used for the purpose of protecting the interests of the Government and not for punishment. To assure the Government the benefits to be derived from the full and free competition of interested bidders, these measures should not be instituted for any time longer than deemed necessary to protect the interests of the Government, and should preclude awards only for the probable duration of the period of non-responsibility.

§ 1–1.601–1 Definitions.

(a) "Debarment" means, in general, an exclusion from Government contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure, or the inadequacy of performance. However, in connection with Executive Order 10925 as amended by Executive Order No. 11114 and as implemented by the rules and regulations of the President's Committee on Equal Employment Opportunity, the term debarment also means an exclusion from Government contracting or subcontracting for an indefinite period of time pending the elimination of the circumstances for which the exclusion was imposed.

(b) "Suspension" means a disqualification from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected upon adequate evidence (see § 1–1.605) of engaging in criminal, fraudulent, or seriously improper conduct.

(c) "Placement in ineligibility status" means a disqualification from Government contracting and subcontracting pending the elimination of the circumstances which constitute the basis for the imposition of the disqualification. Ineligibility under section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)) refers to a situation where the Secretary of Labor has determined a concern or individual to be ineligible to receive procurement contracts for specified materials, articles, or equipment in excess of $10,000 because such concern or individual does not qualify as a "manufacturer" or "regular dealer" within the meaning of that Act. Such ineligibility status remains in effect until rescinded by the Secretary of Labor.

(d) A "debarment list" or "debarred bidders' list" means a list of names of concerns or individuals against whom any or all of the measures referred to in this section have been invoked.

(e) "Affiliates". Business concerns are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

§ 1–1.602 Establishment and maintenance of a list of concerns or individuals debarred, suspended, or declared ineligible.

(a) Each executive agency shall establish and maintain, on the bases contained in § 1–1.602–1, a consolidated list of concerns and individuals to whom contracts will not be awarded and from whom bids or proposals will not be solicited as provided in § 1–1.603.

(b) The list shall show as a minimum the following information:

(1) The names of those concerns or individuals debarred or ineligible (in alphabetical order) with appropriate cross reference where more than one name is involved in a single action;

(2) The basis of authority for each action;

(3) The extent of restrictions imposed; and

(4) The termination date for each debarred listing.

(c) Each executive agency shall determine, in its discretion, as the interests of the national security may require, the necessity for and degree of classification of its list and correspondence relating thereto. If the agency determines that its list shall not be classified, the list should be marked "For Official Use Only" or with a word or phrase of equivalent meaning to prevent inspection of the contents by any and other than personnel required to have access thereto.

(d) The list shall be kept current by issuance of notices of additions and deletions.

§ 1–1.602–1 Bases for entry on the debarred, suspended, and ineligible list.

Entry shall be made on the debarred, suspended, and ineligible list of firms or individuals on the following bases:

(a) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Walsh-Healey Public Contracts Act (41 U.S.C. 37), which have been found by the Secretary of Labor to have violated any of the agreements or representations required by that Act.

(b) Those listed by the Comptroller General in accordance with the provisions of section 3 of the Davis-Bacon Act (40 U.S.C. 276a–2(a)), as found by the Comptroller General to have violated said Act.

(c) Those listed by the Comptroller General in accordance with the provisions of Part 5, section 56(b) of the Regulations of the Secretary of Labor issued pursuant to authority granted under Reorganization Plan 14 of 1950, as found by the Secretary of Labor to be in aggravated or wilful violation of the prevailing wage or overtime pay provisions of any of the following statutes—

(1) Davis-Bacon Act (40 U.S.C. 276a).

(2) Anti-Kickback Act (18 U.S.C. 874, 40 U.S.C. 276b,c).

(3) The Contract Work Hours Standards Act (40 U.S.C. 327–330).

(4) National Housing Act (12 U.S.C. 1703).

(5) Hospital Survey and Construction Act (42 U.S.C. 291).

(6) Federal Airport Act (49 U.S.C. 1101).

(7) Housing Act of 1949 (42 U.S.C. 1401).

(8) School Survey and Construction Act of 1950 (20 U.S.C. 251).

(9) Defense Housing and Community Facilities and Services Act of 1951 (42 U.S.C. 1591).

(10) Federal Civil Defense Act of 1950 (50 App. U.S.C. 2281 (i)).

(11) Area Redevelopment Act of 1961 (42 U.S.C. 2518).

(12) Delaware River Basin Compact (sec. 15.1, 75 Stat. 714).

(13) Health Professions Educational Assistance Act of 1963 (sec. 721, 77 Stat. 167).

(14) Mental Retardation Facilities Construction Act (secs. 101, 122, 135, 77 Stat. 282, 284, 288).

(15) Community Mental Health Centers Act (sec. 205, 77 Stat. 292).

(d) Those the executive agency determines to debar administratively for any of the causes and under all of the appropriate conditions listed in § 1–1.604.

(e) Those debarred by the President's Committee on Equal Employment Opportunity, or by the head of the agency (with the prior approval of the Committee), from participation in Government contracting or subcontracting by reason of noncompliance with the Equal Opportunity Clause.

(f) Those the executive agency determines to suspend administratively for the reasons and under the conditions set forth in § 1–1.605.

(g) Those determined by an executive agency in accordance with section 3(b) of the Buy American Act (41 U.S.C. 10b(b)) to have failed to comply with the provisions of section 3(a) of that Act under any contract containing the specific provision required by said section 3(a) and made by the agency for construction, alteration, or repair of any public building or public work.

(h) Those found by the Secretary of Labor ineligible to be awarded contracts for the reason that they do not qualify as "manufacturers" or "regular dealers" within the meaning of section 1(a) of the Walsh-Healey Public Contracts Act (41 U.S.C. 35(a)).

§ 1–1.603 Treatment to be accorded firms or individuals in debarred, suspended, or ineligible status.

Firms or individuals listed by the agency as debarred, suspended, or ineligible shall be treated as follows:

(a) *Total restrictions.* A contract shall not be awarded to a concern or individual that is listed on the basis of § 1–1.602–1 (a), (b), (d), or (e) or to any concern, corporation, partnership, or association in which the former concern or individual has a controlling interest, nor shall bids or proposals be solicited therefrom. However, when it is determined essential in the public interest by the head of an agency or his designee, an exception may be made with respect to a particular procurement action when a concern or individual is listed as debarred on the basis of § 1–1.602–1(d).

(b) *Restrictions under statutes designated in the regulations of the Secretary of Labor.* A contractor listed on the basis of § 1–1.602–1(c), or any concern, corporation, partnership, or association in which such contractor has a controlling interest, shall be ineligible for a period of three years (from the date of publication by the Comptroller General) to receive any contracts subject to any of the statutes listed in § 1–1.603(c).

(c) *Buy American Act restrictions.* As specified in the Buy American Act (41 U.S.C. 10b(b)), contracts shall not be awarded for construction, alteration, or repair of public buildings or public works in the continental United States or elsewhere to concerns or individuals listed on the basis of § 1–1.602–1(g), nor shall bids or proposals therefor be solicited therefrom. However, firms or individuals listed on this basis may be awarded contracts and may be solicited for bids or proposals for other than construction, alteration, or repair of public buildings or public works in the continental United States or elsewhere.

(d) *Ineligibility restrictions of the Walsh-Healey Act.* Contracts shall not be awarded to firms or individuals in any amount exceeding $10,000 for those materials, supplies, articles, or equipment with respect to which the firm or individual has been found to be ineligible to be awarded a contract by the Secretary of Labor, as provided in § 1–1.602–1(h). However, firms or individuals listed on this basis may, in the discretion of each executive agency, be awarded contracts and may be solicited by bids or proposals, for (1) such materials, supplies, articles, or equipment when the amount does not exceed $10,000; (2) services regardless of amount; and (3) commodities in which not declared ineligible regardless of amount.

(e) *Restrictions for non-compliance with the Equal Opportunity Clause.* A concern or individual debarred for noncompliance with the Equal Employment Opportunity Clause shall not be awarded a Government contract.

(f) *Restrictions on subcontracting.* Where a concern or individual listed on the debarred bidders' list is proposed as a subcontractor, the contracting officer should decline to approve subcontracting with that firm or individual in any instance in which consent is required of the Government before the subcontract is made, unless it is determined by the agency to be in the best interest of the Government to do so.

§ 1–1.604 Causes and conditions applicable to determination of debarment by an executive agency.

Subject to the following conditions, each executive agency is authorized to debar a firm or individual in the public interest for any of the following causes:

(a) *Causes.* (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract, or subcontract thereunder, or in the performance of such contract or subcontract.

(2) Conviction under the Federal Antitrust Statutes arising out of the submission of bids or proposals.

(3) Violation of contract provisions, as set forth below, of a character which is regarded by the agency involved to be so serious as to justify debarment action—

(i) Willful failure to perform in accordance with the specifications or within the time limit provided in the contract.

(ii) A record of failure to perform, or of unsatisfactory performance, in accordance with the terms of one or more contracts; *Provided,* That such failure or unsatisfactory performance has occurred within a reasonable period of time preceding the determination to debar. Failure to perform or unsatisfactory performance caused by acts beyond the control of the firm or individual as a contractor shall not be considered to be a basis for debarment;

(iii) Violation of the contractual provision against contingent fees.

(iv) Acceptance of a contingent fee, which is paid in violation of contractual provision against contingent fees.

(4) Any other cause of such serious and compelling nature, affecting responsibility as a Government contractor, as may be determined by the head of the agency to warrant debarment.

(5) Debarment by some other executive agency.

(b) *Conditions.* (1) Debarment for any of the causes set forth in (a) of this § 1–1.604 shall be made only upon approval of the head of the executive agency or his duly authorized representative.

(2) The existence of any of the causes set forth in (a) of this § 1–1.604 does not necessarily require that a firm or individual be debarred. In each instance, whether the offense or failure, or inadequacy of performance, be of a criminal, fraudulent, or serious nature, the decision to debar shall be made within the discretion of the executive agency and shall be rendered in the best interests of the Government. Likewise, all mitigating factors may be considered in determining the seriousness of the offense, failure, or inadequacy of performance, and in deciding whether debarment is warranted.

(3) The existence of a cause set forth in (a) (1) and (2) of this § 1–1.604 shall be established by criminal conviction by a court of competent jurisdiction. In the event that an appeal taken from such conviction results in a reversal of the conviction, the debarment shall be removed upon the request of the bidder (unless other cause for debarment exists).

(4) The existence of a cause set forth in (a) (3) and (4) of this § 1–1.604 shall be established by evidence which the executive agency determines to be clear and convincing in nature.

(5) Debarment for the cause set forth in (a) (5) of this § 1–1.604 (debarment by another agency) shall be proper provided that one of the causes for debarment set forth in (a) (1) through (4) of this § 1–1.604 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency, or upon a combination of such facts and additional facts.

(c) *Period of debarment.* (1) Debarment of a firm or individual for causes other than failure to comply with the provisions of Equal Opportunity Clause (see § 1–1.602–1(e)), shall be for a reasonable, definitely stated period of time commensurate with the seriousness of the offense or the failure or inadequacy of performance. As a general rule, a period of debarment shall not exceed three years. However, when debarment for an additional period is deemed necessary, notice of the proposed additional debarment shall be furnished to that concern or individual in accordance with § 1–1.604–1. Except as precluded by statute, a debarment may be removed or the period thereof may be reduced by the head of the agency or by his authorized representative, upon the submission of an application, supported by documentary evidence, setting forth appropriate grounds for the granting of relief; such as, newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which the debarment was imposed.

(2) Debarment of a firm or individual for failure to comply with the provisions of the Equal Opportunity Clause generally shall continue until removed by the President's Committee or by the agency itself with the concurrence of the President's Committee.

§ 1–1.604–1 Procedural requirements relating to the imposition of debarment.

(a) *Initiation of debarment action.* An agency seeking to debar a concern or individual (or any affiliate thereof) for cause shall furnish that party with a written notice: (1) stating that debarment is being considered, (2) setting forth the reasons for the proposed debarment, and (3) indicating that such party will be accorded an opportunity for a hearing if he so requests within a stated period of time.

(b) *Hearings.* An opportunity for a hearing conducted in a manner prescribed by agency regulations shall be accorded to any concern or individual which the agency proposes to debar. Such regulations shall establish procedural safeguards which satisfy the demands of fairness, and which, at a minimum, shall provide that information in opposition to the proposed action may be presented, in person or in writing, and, if desired, through an appropriate representative. However, where one agency has imposed debarment upon a concern or individual, a second agency may also impose a similar debarment for a concurrent period without according an opportunity for a hearing provided that the second agency furnishes notice of the proposed similar debarment to that party, and accords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.

(c) *Scope of debarment.* (1) A debarment may include all known affiliates of a concern or individual. (See § 1–1.603(a)).

(2) Each decision to include a known affiliate within the scope of a proposed debarment is to be made on a case by case basis, after giving due regard to all the relevant facts and circumstances.

(3) The criminal, fraudulent, or seriously improper conduct of an individual may be imputed to the business concern with which he is connected, where such grave impropriety was accomplished within the course of his official duty or was effected by him with the knowledge or approval of that concern. Likewise, where a concern is involved in criminal, fraudulent, or seriously improper conduct, any individual who was involved in the commission of the grave impropriety may be debarred.

§ 1–1.605 Suspension of bidders.

(a) Agencies electing to utilize a suspension procedure shall employ the procedure set forth in this section.

(b) Suspension is a drastic action and, as such, shall not be based upon an unsupported accusation. In assessing whether adequate evidence exists for invoking a suspension, consideration should be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, as well as to the inferences which may properly be drawn from the existence or absence of affirmative facts. This assessment should include an examination of basic documents, such as contracts, inspection reports, and correspondence. A suspension may be modified whenever it is determined to be in the interest of the Government to do so.

§ 1–1.605–1 Causes and conditions under which executive agencies may suspend contractors.

(a) An agency may, in the interest of the Government, suspend a firm or individual:

(1) Suspected, upon adequate evidence, of—

(i) Commission of fraud or a criminal offense as an incident to obtaining, attempting to obtain, or in the performance of a public contract:

(ii) Violation of the Federal antitrust statutes arising out of the submission of bids and proposals; or

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty, which seriously and directly affects the question of present responsibility as a Government contractor; or

(2) For other cause of such serious and compelling nature, affecting responsibility as a Government contractor, as may be determined by the agency to warrant suspension.

(b) A suspension invoked by an agency for any of the causes set forth in (a) (1) and (2) of this § 1–1.605–1 may be the basis for the imposition of a concurrent suspension by another agency.

§ 1–1.605–2 Period and scope of suspension.

(a) *Period of suspension.* All suspensions shall be for a temporary period pending the completion of an investigation and such legal proceedings as may ensue. In the event that prosecutive action has not been initiated by the Department of Justice within 12 months from the date of the notice of suspension, the suspension shall be terminated unless an Assistant Attorney General requests continuance of the suspension. If such a request is received the suspension may be continued for an additional six months. Notice of the proposed removal of the suspension shall be given to the Department of Justice 30 days prior to the expiration of the 12-month period. In no event shall a suspension continue beyond 18 months unless prosecutive action has been initiated within that period. Whenever prosecutive action has been initiated, the suspension may continue until the legal proceedings are

completed. Upon removal of a suspension, consideration may be given to debarment in accordance with § 1.604 of this subpart.

(b) *Scope of suspension.* (1) Suspension may include all known affiliates of a concern (firm) or individual.

(2) A decision to include known affiliates in a proposed suspension is an individual determination and, as such, must be made on a case by case basis.

(3) The criminal, fraudulent, or seriously improper conduct of an individual may be imputed to the business firm with which he is connected when the impropriety involved was performed within the course of his official duty, or with knowledge or approval of the business firm.

§ 1–1.605–3 Restrictions during period of suspension.

During a period of suspension of a firm or individual, the following policies and procedures shall be applicable:

(a) Bids and proposals shall not be solicited from suspended contractors. If received, bids and proposals shall not be considered and awards for contracts shall not be made to suspended contractors unless it is determined by the agency to be in the best interest of the Government.

(b) Suspended contractors will be subject to the provisions of § 1–1.603(f) regarding restrictions on subcontractors.

§ 1–1.605–4 Notice of suspension.

(a) The firm or individual concerned shall be furnished a written notice of the suspension by the agency within 10 days after the effective date. The notice shall state as follows:

(1) The suspension is based (i) on the information that the firm or individual has committed irregularities of a serious nature in business dealings with the Government or (ii) on irregularities which seriously reflect on the propriety of further dealings of the firm or individual with the Government. (The irregularities should be described in general terms without disclosing the Government's evidence);

(2) The suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) Bids and proposals will not be solicited from the firm or individual and, if received, will not be considered for award unless determined by the agency to be in the best interest of the Government.

(4) The suspension is effective throughout the agency. All inquiries concerning suspended contractors shall be handled in accordance with agency procedures. Where a matter has been referred to the Department of Justice, the agency shall not give further information to the firm or individual concerning the reasons for suspension beyond that stated in the notice of suspension set forth in this § 1–1.605–4 until the Department of Justice has been advised of the inquiry and acquiesces in any such disclosure.

§ 1–1.606 Agency procedure.

Each agency shall:

(a) Establish internal procedures and methods for giving effect to this Subpart 1–1.6.

(b) Notify the General Services Administration (GSA) of the name and address of its central office where debarment information should be sent.

(c) Furnish to GSA a copy of the notice of debarment (at time of issuance) on those debarments made under provisions of §1–1.604(a), or the Buy American Act, and provide GSA with information as to any removals of such debarments.

(d) Check the list of debarred bidders furnished by GSA, and consider firms or individuals listed thereon for inclusion upon its own list, in accordance with the provisions of this Subpart 1–1.6.

(e) As needed, request from GSA a copy of the notice on any debarment case appearing on the list herein provided to be compiled and distributed by GSA. If desired, direct inquiry concerning any debarment case may be made of the agency which originated the action.

(f) Make its list available to all contracting officers within the agency.

§ 1–1.607 General Services Administration responsibility.

In addition to the agency procedure provided in § 1–1.606, GSA will:

(a) Compile and distribute to the designated central office address of each agency a listing of the administrative debarments and debarments under the Buy American Act made by the agencies, including the basis of action, in order that each executive agency may be informed of actions taken by each other agency. In general application, this listing will be for information purposes only and it is not intended to take the place of, or be an addition to, the lists maintained by the various agencies.

(b) Furnish to any agency, on specific request, a copy of the notice reflecting the basis for debarment action taken by another agency for causes contained in § 1–1.604(a) or under the Buy American Act.

Subpart 1–1.7—Small Business Concerns

§ 1–1.700 General.

(a) This subpart, which implements programs developed cooperatively with the Small Business Administration (SBA) and the Government agencies having procurement responsibility, sets forth (1) procurement policy with reference to small business concerns; (2) policy governing the relationship of procurement agencies with SBA; (3) SBA certificate of competency program; (4) small business set-aside procedures; (5) small business subcontracting policies; and (6) information concerning SBA's size standards.

(b) This subpart applies only in the United States, its territories and possessions, Puerto Rico, and the District of Columbia.

§ 1–1.701 Definitions.

The definitions in this section apply throughout this Subpart 1–1.7. Those definitions relating to SBA size standards for procurement purposes are based on the governing regulations of SBA on the subject (13 CFR Part 121).

§ 1–1.701–1 Small business concern (for Government procurement)

(a) *General.* A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in this section. ("Concern" means any business entity organized for profit with a place of business located in the United States, its possessions, and Puerto Rico, including but not limited to, an individual, partnership, corporation, joint venture, association, or cooperative. "Annual receipts" means the annual receipts less returns and allowances of a concern and its affiliates.) For the purpose of a procurement of a product classified into two or more industries with different size standards, the smallest of such size standards shall be used in determining a bidder's size status.

(b) *Construction.* Any concern bidding on a contract for construction, alteration, or repair (including painting and decorating) of buildings, bridges, roads, or other real property is classified:

(1) As small if its average annual receipts for its preceding three fiscal years do not exceed $7,500,000 (except that if the concern is located in Alaska, such receipts do not exceed $9,375,000).

(2) As small if it is bidding on a contract for dredging and its average annual receipts for its preceding three fiscal years do not exceed $5,000,000 (except that if the concern is located in Alaska, such receipts do not exceed $6,250,000).

(c) *Manufacturing.* Any concern bidding on a contract for a product it manufactured is classified:

(1) *Food canning and preserving.* As small if it is bidding on a contract for food canning and preserving and its number of employees does not exceed 500 persons, exclusive of agricultural labor as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(k).

(2) *Petroleum.* As small if it is bidding on a contract for petroleum, other than lubricants and miscellaneous petroleum products, and its number of employees does not exceed 1,000 persons and it does not have more than 30,000 barrels per day crude oil capacity from owned or leased facilities. ("Crude-oil capacity" means the maximum daily average crude throughput of a refinery in complete operation, with allowance for necessary shutdown time for routine maintenance, repairs, etc. It approximates the maximum daily average crude runs to stills that can be maintained for an extended period.)

(3) *Manufacturing industries listed in §1–1.701–1(h).* As small if it is bidding on a contract for a product classified within an industry set forth in paragraph (h) of this section and its number of employees does not exceed the size standard established for that industry.

(4) *Manufacturing industries not listed in § 1–1.701–1(h).* As small if it is bidding on a contract for a product classified within an industry not set forth in paragraph (h) of this section and its number of employees does not exceed 500 persons.

(d) *Small business non-manufacturer.* Any concern which submits a bid or offer in its own name, other than for a construction or service contract, but which proposes to furnish a product not manufactured by itself, is deemed to be a small business concern when:

(1) It is a small business concern within the meaning of § 1–1.701–1(a);

(2) Its number of employees does not exceed 500 persons; and

(3) In the case of Government procurement reserved for or involving the preferential treatment of small business concerns (including equal low bids), such non-manufacturer shall furnish in the performance of the contract the products of a small business manufacturer or producer which products are manufactured or produced in the United States, its possessions, or Puerto Rico. However, if the goods to be furnished are wool, worsted, knitwear, duck, webbing, and thread (spinning and finishing), non-manufacturers (dealers and converters) shall furnish such products which have been manufactured or produced by a small weaver (small knitter for knitwear) and, if finishing is required, by a small finisher.

("Non-manufacturer" means any concern which in connection with a specific Government procurement contract, other than a construction or service contract, does not manufacture or produce the products required to be furnished by such procurement. Non-manufacturer includes a concern which can manufacture or produce the products referred to in the specific procurement but does not do so in connection with that procurement.)

(e) *Research, development, and testing.* Any concern bidding on a contract for research, development, and/or testing is classified:

(1) As small if it is bidding on a contract for research and/or development which requires delivery of a manufactured product and (i) it qualifies as a small business manufacturer within the meaning of § 1–1.701–1(c) for the industry into which the product is classified, or (ii) it qualifies as a small business nonmanufacturer within the meaning of § 1–1.701–1(d).

(2) As small if it is bidding on a contract for research and/or development which does not require delivery of a manufactured product or on a contract for testing and its number of employees does not exceed 500 persons.

(f) *Services.* Any concern bidding on a contract for services, not elsewhere defined in this section, is classified as small if its average annual sales or receipts for its preceding three fiscal years do not exceed $1,000,000 (except that if the concern is located in Alaska, such sales or receipts do not exceed $1,250,000).

(g) *Transportation.* Any concern bidding on a contract for passenger or freight transportation, not elsewhere defined in this section, is classified:

(1) As small if its number of employees does not exced 500 persons.

(2) As small if it is bidding on a contract for air transportation and its number of employees does not exceed 1,000 persons.

(3) As small if it is bidding on a contract for trucking (local and long distance), warehousing, packing and crating, and/or freight forwarding, and its annual receipts do not exceed $3,000,000 (except that if the concern is located in Alaska, such receipts do not exceed $3,750,000). No concern will be denied small business status for the purpose of Government procurement solely because of its contractual relationship with a large interstate van line, provided that its annual receipts have not exceeded $3,000,000 during the concern's most recently completed fiscal year and provided further no more than 50 percent of such annual receipts are directly attributable to the applicant's relationship with an interstate van line.

(h) *Table of specific industry employment size standards for the purpose of Government procurement.* (See footnotes at end of table.)

MANUFACTURING

Census classification code	Industry	Employment size standard (number of employees)[1]
	MAJOR GROUP 19—ORDNANCE AND ACCESSORIES	
1925	Guided missiles and space vehicles, completely assembled	1,000
1931	Tanks and tank components	1,000
1951	Small arms	1,000
1961	Small arms ammunition	1,000
	MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS	
2032	Canned specialties	1,000
2043	Cereal preparations	1,000
2046	Wet corn milling	750
2052	Biscuit, crackers, and pretzels	750
2062	Cane sugar refining	750
2063	Beet sugar	750
2085	Distilled, rectified, and blended liquors	750
2093	Vegetable oil mills, except cottonseed and soybean	1,000

See footnote at end of document.

MAJOR GROUP 20—FOOD AND KINDRED PRODUCTS—con.

Census classification code	Industry	Employment size standard (number of employees)[1]
2096	Shortening, table oils, margarine and other edible fats and oils, not elsewhere classified	750

MAJOR GROUP 21—TOBACCO MANUFACTURES

2111	Cigarettes	1,000

MAJOR GROUP 22—TEXTILE MILL PRODUCTS

2211	Broad woven fabric mills, cotton	1,000
2261	Finishers of broad woven fabrics of cotton	1,000
2271	Woven carpets and rugs	750
2296	Tire cord and fabric	1,000

MAJOR GROUP 26—PAPER AND ALLIED PRODUCTS

2611	Pulp mills	750
2621	Paper mills, except building paper mills	750
2631	Paperboard mills	750
2646	Pressed and molded pulp goods	750
2654	Sanitary food containers	750
2661	Building paper and building board mills	750

MAJOR GROUP 28—CHEMICALS AND ALLIED PRODUCTS

2812	Alkalies and chlorine	1,000
2813	Industrial gases	1,000
2815	Dyes, dye (cyclic) intermediates, and organic pigments (lakes and toners)	750
2816	Inorganic pigments	1,000
2818	Industrial organic chemicals, not elsewhere classified	1,000
2819	Industrial inorganic chemicals, not elsewhere classified	750
2821	Plastics materials, synthetic resins, and nonvulcanizable elastomers	750
2822	Synthetic rubber (vulcanizable elastomers)	1,000
2823	Cellulose man-made fibers	1,000
2824	Synthetic organic fibers, except cellulosesic	1,000
2833	Medicinal chemicals and botanical products	750
2834	Pharmaceutical preparations	750
2841	Soap and other detergents, except specialty cleaners	750
2892	Explosives	750

MAJOR GROUP 29—PETROLEUM REFINING AND ALLIED PRODUCTS

2911	Petroleum refining [2]	1,000
2952	Asphalt felts and coatings	750

See footnote at end of document.

MAJOR GROUP 30—RUBBER AND MISCELLANEOUS PLASTIC PRODUCTS

Census classification code	Industry	Employment size standard (number of employees)[1]
3011	Tires and inner tubes	1,000
3021	Rubber footwear	1,000
3031	Reclaimed rubber	750

MAJOR GROUP 32—STONE, CLAY, AND GLASS PRODUCTS

3211	Flat glass	1,000
3221	Glass containers	750
3229	Pressed and blown glass and glassware, not elsewhere classified	750
3241	Cement, hydraulic	750
3261	Vitreous china plumbing fixtures and china, and earthenware fittings and bathroom accessories	750
3275	Gypsum products	1,000
3292	Asbestos products	750
3296	Mineral wool	750
3297	Nonclay refractories	750

MAJOR GROUP 33—PRIMARY METAL INDUSTRIES

3312	Blast furnaces (including coke ovens), steel works, and rolling-mills	1,000
3313	Electrometallurgical products	750
3315	Steel wire drawing and steel nails and spikes	1,000
3316	Cold rolled sheet, strip and bars	1,000
3317	Steel pipe and tubes	1,000
3331	Primary smelting and refining of copper	1,000
3332	Primary smelting and refining of lead	1,000
3333	Primary smelting and refining of zinc	750
3334	Primary production of aluminum	1,000
3339	Primary smelting and refining of nonferrous metals, not elsewhere classified	750
3351	Rolling, drawing, and extruding of copper	750
3352	Rolling, drawing, and extruding of aluminum	750
3356	Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum	750
3357	Drawing and insulating of nonferrous wire	1,000
3399	Primary metal industries, not elsewhere classified	750

MAJOR GROUP 34—FABRICATED METAL PRODUCTS, EXCEPT ORDNANCE, MACHINERY, AND TRANSPORTATION EQUIPMENT

3411	Metal cans	1,000
3431	Enameled iron and metal sanitary ware	750

MAJOR GROUP 35—MACHINERY, EXCEPT ELECTRICAL

Census classification code	Industry	Employment size standard (number of employees)[1]
3511	Steam engines, steam, gas and hydraulic turbines; and steam gas, and hydraulic turbine generator set units	1,000
3519	Internal combustion engines, not elsewhere classified	1,000
3531	Construction machinery and equipment	750
3562	Ball and roller bearings	750
3571	Computing and accounting machines, including cash registers	1,000
3572	Typewriters	1,000
3585	Refrigerators, refrigeration machinery, except household; and complete air conditioning units	750

MAJOR GROUP 36—ELECTRICAL MACHINERY, EQUIPMENT AND SUPPLIES

3612	Power, distribution, and specialty transformers	750
3613	Switchgear and switchboard apparatus	750
3621	Motors and generators	1,000
3622	Industrial controls	750
3624	Carbon and graphite products	750
3631	Household cooking equipment	750
3632	Household refrigerators and home and farm freezers	1,000
3633	Household laundry equipment	1,000
3634	Electric housewares and fans	750
3635	Household vacuum cleaners	750
3636	Sewing machines	750
3641	Electric lamps	1,000
3651	Radio and television receiving sets, except communication types	750
3652	Phonograph records	750
3661	Telephone and telegraph apparatus	1,000
3662	Radio and television transmitting, signaling, and detection equipment and apparatus	750
3671	Radio and television receiving type electron tubes, except cathode ray	1,000
3672	Cathode ray picture tubes	750
3673	Transmitting, industrial, and special purpose electron tubes	750
3692	Primary batteries, dry and wet	1,000
3694	Electrical equipment for internal combustion engines	750

MAJOR GROUP 37—TRANSPORTATION EQUIPMENT

3717	Motor vehicles and parts [3]	1,000
3721	Aircraft [4]	1,000
3722	Aircraft engines and engine parts [4]	1,000
3723	Aircraft propellers and propeller parts	1,000
3729	Aircraft parts and auxiliary equipment, not elsewhere classified [5]	1,000
3731	Shipbuilding and repairing	1,000
3741	Locomotives and parts	1,000
3742	Railroad and street cars	750

See footnote at end of document.

MAJOR GROUP 9—MISCELLANEOUS MANUFACTURING INDUSTRIES

Census classification code	Industry	Employment size standard (number of employees)[1]
3982	Linoleum, asphalted-felt-base, and other hard surface floor coverings, not elsewhere classified	750

[1] The "number of employees" means the average employment of any concern and its affiliates based on the number of persons employed during the pay period ending nearest the last day of the 3d month in each calendar quarter for the preceding 4 quarters.

[2] Together with its affiliates does not employ more than 1,000 persons and does not have more than 30,000 barrels-per-day capacity from owned and leased facilities.

[3] The three Standard Industrial Classification industries (3711, 3712, and 3714) have been combined because of a major problem of defining the reporting unit in terms of these industries. This difficulty arises from the fact that many large establishments have integrated operations which include the production of parts or bodies and the assembly of complete vehicles at the same location.

[4] Includes maintenance as defined in the Federal Aviation Regulations (14 CFR 1.1) but excludes contracts solely for preventive maintenance as defined in 14 CFR 1.1. As defined in the Federal Aviation Regulations:

" 'Maintenance' means inspection, overhaul, repair, preservation, and the replacement of parts, but excludes preventive maintenance."

" 'Preventive maintenance' means simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations."

[5] Guided missile engines and engine parts are classified in SIC 3722. Missile control systems are classified in SIC 3662.

§ 1–1.701–2 Affiliates.

Business concerns are affiliates of each other when either directly or indirectly (a) one concern controls or has the power to control the other, or (b) a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships.

§ 1–1.701–3 Dominance in field of operation.

A concern "is not dominant in its field of operation" when it does not exercise a controlling or major influence in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of mate-

rials, processes, patents and license agreements, facilities, sales territory, and nature of business activity.

§ 1–1.701–4 Small business Government subcontractors.

(a) Any concern, in connection with subcontracts of $2,500 or less which relate to Government procurement, will be considered a small business concern if, including its affiliates, its number of employees does not exceed 500 persons.

(b) Any concern, in connection with subcontracts exceeding $2,500 which relate to Government procurement, will be considered a small business concern if it qualifies as such under § 1–1.701–1.

§ 1–1.701–5 Number of employees.

In connection with the determination of small business status, "number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full time, part time, temporary, or other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month.

§ 1–1.701–6 Industry.

"Industry" means a grouping of establishments primarily engaged in similar lines of activity as listed and described in the Standard Industrial Classification Manual (and the 1963 supplement thereto) prepared and published by the Bureau of the Budget, Executive Office of the President.

§ 1–1.701–7 Certificate of competency.

A "certificate of competency" means a certificate issued by SBA pursuant to the authority contained in the Small Business Act (15 U.S.C. 637(b)(7)) stating that the holder of the certificate is competent as to capacity and credit to perform a specific Government procurement contract. (Also see § 1–1.708.)

§ 1–1.701–8 Set-aside for small business.

A set-aside for small business is the act of reserving the entire amount (total set-aside) or a portion (partial set-aside) of a procurement for the exclusive participation of small business concerns. Set-asides may be made for individual items or for classes of items (class set-asides).

§ 1–1.701–9 Small business restricted advertising.

Small business restricted advertising is a special method of negotiated procurement conducted in the same manner as for formal advertising, except that competition and awards are restricted to small business concerns.

§ 1–1.702 Small business policies.

(a) *General policy.* It is the policy of the Government to aid, counsel, assist, and protect, insofar as possible, the interests of small business concerns in order to preserve free competitive enterprise; and to place with small business concerns a fair proportion of the total Government purchases and contracts for property and services (including contracts for maintenance, repair, construction, and research and development).

(b) *Specific policies.* The following specific small business policies shall be followed by procurement agencies in order to further the general policy stated in (a) of this § 1–1.702:

(1) Small business concerns shall be afforded an equitable opportunity to compete for prime contracts and subcontracts.

(2) Bidders mailing lists (see § 1–2.205) shall include all established and potential small business suppliers who have made acceptable application for inclusion or who appear from other information (including recommendations by the SBA representative) to be qualified for inclusion therein.

(3) Invitations for bids or requests for proposals shall be sent to all firms on the appropriate mailing list except that where less than a complete list is used pursuant to § 1–2.205–4, a pro rata number of small business concerns shall be solicited.

(4) Proposed procurements and contract awards shall be publicized in the "Commerce Business Daily" in accordance with Subpart 1–1.10.

(5) Procurement of property and services shall be divided into reasonably small lots (not less than economic production runs) in order to permit bidding on quantities less than the total requirements.

(6) The maximum amount of time practicable (see § 1.202–1) shall be allowed for preparation and submission of bids and proposals.

(7) Delivery schedules shall be established on a realistic basis which will encourage small business participation to the extent consistent with the actual requirements of the Government.

(8) Applicable specifications, plans, and drawings either shall be furnished with invitations for bids and requests for proposals or, when not so furnished, information as to locations where they may be obtained or examined shall be furnished.

(9) Procurements shall be set aside for exclusive participation by small business concerns in accordance with § 1–1.706.

(10) In the event of equal low bids, preference shall be given to small business concerns in accordance with § 1–2.407–6.

(11) Subcontracting to small business concerns shall be encouraged in accordance with § 1–1.710.

(12) Procurement agencies and SBA are responsible for consulting and cooperating in carrying out the purposes of the Small Business Act, as amended (15 U.S.C. 631–647), in accordance with § 1–1.705.

(13) Placement of small purchases with small business concerns shall be encouraged (see § 1–3.602).

§ 1–1.703 Determination of status as a small business concern.

§ 1–1.703–1 Representation by bidder or offeror.

In the absence of a written protest or question, the contracting officer shall accept as conclusive for the purpose of a specific procurement a representation by the bidder or offeror that it is a small business concern as defined by SBA.

§ 1–1.703–2 Protest regarding small business status.

(a) Any responsive bidder or offeror may, before award, question the small business status of any apparently low bidder or offeror by sending a written protest, as defined in (b) of this § 1–1.703–2, to the contracting officer responsible for the particular procurement. Any contracting officer who receives such protest, or who wishes to question the small business status of a bidder or offeror himself, shall forward such protest record (or submit his protest) to the SBA regional office serving the area in which the protested concern is located.

(b) As used in this section, "protest" means a statement in writing from any responsive bidder or offeror having a valid interest in whether or not a bidder on a Government procurement is a small business concern. Such statement shall contain the basis for the protest, together with specific detailed evidence supporting the protestant's claim that such bidder is not a small business concern. A complaint received after award of a contract or a complaint received that a concern is not a small business concern, but which does not meet the requirements of this paragraph, will not be considered a "protest" and will not be acted upon.

(c) Upon receipt of a protest, the SBA Regional Director or his delegate will promptly notify the contracting officer of the date it was received, and will inform the affected bidder or offeror that its size status is under review.

(d) SBA will, within 10 working days, if possible, after receipt of a protest, investigate and determine the small business status of the protested bidder or offeror and notify the contracting officer, the protestant, and the protested bidder or offeror of its decision.

(e) Procurement action shall be suspended pending SBA's determination or expiration of the 10-day period, whichever is earlier, unless unusual conditions make it necessary that an award be made. If SBA's determination is not received by the contracting officer within 10 working days after SBA's receipt of the protest, the contracting officer shall ascertain when such determination can be expected. In cases where further delay in awarding the contract would be disadvantageous to the Government, it shall be presumed that the questioned bidder or offeror is a small business concern.

§ 1–1.704 Agency program direction and operation. [Reserved for use by individual agencies]

§ 1–1.705 Cooperation with the Small Business Administration.

§ 1–1.705–1 General.

It is a requirement of the Small Business Act that SBA and procurement agencies consult and cooperate in carrying out the policies of that Act. Such consultation and cooperation is particularly significant in the areas and programs described in §§ 1–1.705–2 through 1–1.705–7.

§ 1–1.705–2 SBA representatives.

SBA may assign one or more representatives (hereinafter referred to as "SBA representatives") on a full- or part-time basis to any procuring activity for the purpose of carrying out SBA responsibilities under the Small Business Act. SBA representatives will comply with agency directives concerning the conduct of procurement personnel and instructions concerning release of procurement information.

§ 1–1.705–3 Screening of procurements.

(a) *Individual set-asides.* SBA representatives (cleared for security where classified procurements are to be screened) shall, upon request, promptly be afforded an opportunity at the procuring activity to review all proposed procurements if it is anticipated that the resulting contract or contracts will exceed $2,500 unless in the case of procurements which are not expected to exceed $10,000, the head of the procuring activity determines that such review would unduly delay the procurement process. A copy of the determination and the justification therefor shall be furnished to the SBA representative. Where it is anticipated that the resulting contract or contracts will exceed $2,500, such SBA representatives shall, upon request, promptly be afforded an opportunity to make recommendations concerning proposed procurements, including that they be exclusively or partially set aside for small business concerns.

The contracting officer shall afford the SBA representative an opportunity to recommend appropriate names of small business concerns for inclusion in lists of bidders for firms to be solicited in connection with current and future procurements.

(b) *Class set-asides.* SBA representatives shall be afforded an opportunity to make recommendations that current and future procurements, or portions thereof, of selected items or services, or groups of like items or services, shall be set aside as provided in § 1–1.706, for exclusive small business participation. Such set-asides, when approved by the contracting officer, shall be known as class set-asides. Concurrence in a class set-aside shall not be dependent upon the existence of a current procurement if future procurements can be clearly foreseen.

§ 1–1.705–4 Access to information.

Upon request, and subject to applicable security regulations, SBA representatives shall be given access to available or reasonably obtainable information, including technical data (including drawings and specifications), procurement history, bidders lists, and planned requirements immediately upon receipt by the procuring activity. The SBA representative will be furnished such other available or reasonably obtainable information as may be required for the SBA referral program.

§ 1–1.705–5 Joint small business set-asides.

The policies and procedures for joint small business set-asides, set forth in § 1–1.706, were developed cooperatively with the SBA and Government procurement agencies.

§ 1–1.705–6 Certificates of competency.

Section 1–1.708 prescribes policies and procedures governing cooperative action with SBA concerning certificates of competency.

§ 1–1.705–7 Performance of contract by SBA.

In accordance with the Small Business Act (15 U.S.C. 637(a)), in any case in which the Administrator of SBA certifies to the head of the procuring agency concerned that SBA is competent to perform any specific contract, the contracting officer is authorized, in his discretion, to award the contract to SBA upon such terms and conditions, consistent with applicable procurement regulations, as may be agreed upon between SBA and the contracting officer.

§ 1–1.706 Procurement set-asides for small business.

§ 1–1.706–1 General.

(a) *Purpose.* The purpose of small business set-asides is to increase small business participation in Government procurement.

(b) *Applicability.* This section is applicable to small business set-aside programs of executive agencies in connection with all procurement of property and services, maintenance, repair and construction, and research and development.

(c) *Implementation.* Subject to any applicable preference for labor surplus area set-asides as provided in § 1–1.802, any individual procurement or class of procurements, or an appropriate part thereof, shall be set aside for the exclusive participation of small business concerns when such action (1) is jointly determined by an SBA representative and the contracting officer upon the initiation of either agency, or (2) if no SBA representative is available, is unilaterally determined by the contracting officer to be in the interest of maintaining or mobilizing the Nation's full productive capacity, or to be in the interest of war or national defense programs, or to be in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns.

(d) *Initiation of set-asides.* Insofar as practicable, joint determinations initiated by SBA representatives shall be used as the basis for small business set-asides rather than unilateral determinations. This, however, does not preclude an agency from initiating with SBA a proposal for a joint determination. The impracticability of arranging a joint determination should not be treated as an obstacle to making a set-aside based on a unilateral determination initiated by the contracting officer in an otherwise appropriate case.

§ 1–1.706–2 Review of SBA set-aside proposals.

(a)(1) When an SBA representative has recommended that all, or a portion, of an individual procurement or class of procurements be set aside for small business, the contracting officer (or other designated representative) of the procurement agency shall promptly either (i) concur in the recommendation, or (ii) disapprove the recommendation, stating in writing his reasons for disapproval. The SBA representative shall be allowed two working days to appeal any such disapproval to the head of the procuring activity or his designee for decision. During consideration of such appeal there shall be full and free interchange of all pertinent facts between the SBA representative and the procuring activity concerned. Within one working day after receipt of a decision from the head of the procuring activity or his designee disapproving a recommended set-aside, the SBA representative may request the contracting officer to suspend procurement actions affected by the recommended set-aside pending a further appeal by the Administrator of SBA to the head of the agency concerned for determination. SBA shall be allowed seven working days after making any such request within which (i) the Administrator of SBA may appeal the decision of the head of the procuring activity (or his designee) to the head of the agency concerned, and (ii) to notify the contracting officer whether such an appeal has in fact been taken. If such notification is not received by the contracting officer within the seven-day period, it shall be deemed that the SBA request to suspend procurement action has been withdrawn and that no appeal to the head of the agency was taken. Where an appeal to the head of the agency concerned has been taken and the contracting officer has been notified of that fact within the seven-day period, the head of the procuring activity will, in accordance with agency procedures, forward through appropriate channels to the head of the agency a full justification of his decision.

(2) Any procurement action affected by a set-aside recommendation which has been disapproved by the contracting officer and appealed by the SBA representative shall be suspended pending the decision of the head of the procuring activity or his designee. If the decision sustains the disapproval and if the SBA representative requests further suspension in accordance with (1) of this § 1–1.706–2(a), the suspension shall continue until (i) the SBA appeal is deemed to have been withdrawn (as provided in (1) of this § 1–1.706–2(a), or (ii) the matter is determined by the head of the agency concerned. Such suspension shall not

apply, however, to any particular procurement action which, as determined by the contracting officer, must, in order to protect the public interest, be initiated without delay and as to which he inserts in the contract file a statement signed by him setting forth the facts and circumstances justifying the determination. The contracting officer shall promptly notify the SBA representative of any procurement action initiated pursuant to the preceding sentence by supplying him with a copy of the justification.

(b) None of the following is, in itself, sufficient cause for not making a set-aside:

(1) A large percentage of previous procurements of the item in question has been placed with small business concerns.

(2) The item to be purchased is on an established planning list under the Industrial Readiness Planning Program, except that a total set-aside shall not be authorized when one or more large business Planned Emergency Producers of the item desire to participate in the procurement.

(3) The item to be purchased is on a Qualified Products List, except that a total set-aside shall not be authorized when the products of one or more large businesses are on the Qualified Products List unless it has been confirmed that none of such large businesses desires to participate in the procurement.

(4) A period of less than 30 days from date of issuance of invitations for bids or requests for proposals is prescribed for the submission of the bids or proposals.

(5) The procurement is classified.

(6) Small business concerns are receiving a fair proportion of the total contracts for property or services.

(7) A class set-aside of the item or service concerned has been made at some other procuring activity.

(8) The item will be described by "brand name or equal."

(c) In approving a proposed class set-aside, the contracting officer shall make sure that the set-aside determination (1) specifically identifies the items or services subject thereto; (2) provides that it will, at least once each year, be reviewed jointly by an SBA representative and the procuring activity to determine whether it should be withdrawn (see § 1–1.706–3 for withdrawal procedures); (3) provides that it does not apply to any individual procurement for which small purchase procedures are to be used; and (4) provides that such class set-aside applies only to the procuring activity making or participating in the set-aside determination. Any class of procurements proposed to be totally set aside shall satisfy the requirements of § 1–1.706–5(a). With respect to any class of procurements proposed to be partially set aside, the set-aside determination shall specify that it is not applicable to any individual procurement which is not serverable into two or more economic production runs or reasonable lots.

§ 1–1.706–3 Withdrawal or modification of set-asides.

(a) Each individual procurement governed by a class set-aside shall be carefully reviewed to insure that any changes in the magnitude of anticipated requirements, specifications for the items or services, delivery requirements, or competitive market conditions, since the initial approval of the class set-aside, are not of such material nature as to result in the probable payment of an unreasonable price by the Government or in a change in small business capability.

(b) If, prior to the award of a contract involving an individual or class set-aside for small business, the contracting officer considers that procurement of the set-aside portion from a small business concern would be detrimental to the public interest (e.g., because of unreasonable price), the contracting officer shall withdraw a unilateral set-aside determination. In the case of a joint set-aside determination, the contracting officer may initiate the withdrawal thereof by giving notice, containing the reason therefor, to the SBA representative. Similarly, a class set-aside may be modified so as to withdraw one or more individual procurements therefrom. In the case of a joint set-aside determination, if the SBA representative does not agree to a withdrawal or modification, the action may be appealed in accordance with the procedures set forth in § 1–1.706–2(a).

(c) A statement supporting any withdrawal or modification of a set-aside shall be made by the procuring activity and retained in the contract file.

§ 1–1.706–4 Reporting for Department of Commerce Procurement Synopsis.

Section 1–1.1003–7 contains special instructions concerning reporting of procurements involving small business set-asides to the Department of Commerce for publication in the "Commerce Business Daily."

§ 1–1.706–5 Total set-asides.

(a) Subject to the conditions set forth in §§ 1–1.706–1 and 1–1.706–2, the entire amount of an individual procurement or class of procurements shall be set aside for exclusive small business participation where there is a reasonable expectation that bids or proposals will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices. Total set-asides shall not be made unless such a reasonable expectation exists; however, in the absence of such expectation, a partial set-aside shall be considered pursuant to § 1–1.706–6. Although past procurement history of the item or similar items is always important, it is not the only controlling factor which should be considered in determining whether a reasonable expectation exists.

(b) Contracts involving total small business set-asides shall be entered into by conventional negotiation or by a special method of procurement known as "Small Business Restricted Advertising." Whenever possible, the small business restricted advertising method, as defined in § 1–1.701–9, shall be used. Invitations for bids and requests for proposals involving total small business set-asides shall be restricted to small business concerns. Bids received from firms which do not qualify as small business concerns shall be considered nonresponsive and shall be rejected.

(c) In procurements involving total set-asides for small business, each invitation for bids or request for proposals shall contain the following notice, except that such notice may be modified to include the applicable specific small business definition.

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE

(a) *Restriction.* Bids or proposals under this procurement are solicited from small business concerns only and this procurement is to be awarded only to one or more small business concerns. This action is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. Bids or proposals received from firms which are not small business concerns shall be considered nonresponsive.

(b) *Definition.* A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (13 CFR 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided,* That this additional requirement does not apply in connection with construction or service contracts.

§ 1–1.706–6 Partial set-asides.

(a) *General.* Subject to the conditions set forth in § 1–1.706–1, a portion of a procurement shall be set aside for exclusive small business participation where—

(1) The procurement is not appropriate for total set-aside pursuant to § 1–1.706–5;

(2) The procurement is severable into two or more economic production runs or reasonable lots; and

(3) One or more small business concerns are expected to have the technical competence and productive capacity to furnish a severable portion of the procurement at a reasonable price.

Similarly, a class of procurements (including but not limited to contracts for maintenance, repair, and construction) may be partially set aside in accordance with § 1–1.706–2(c).

(b) *Dividing the procurement.* Where a portion of a procurement is to be set aside for small business pursuant to (a) of this § 1–1.706–6, the procurement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall be not less than an economic production run or reasonable lot. Insofar as practicable, the set-aside portion will be such as to make maximum use of small business capacity. Delivery and other terms applicable to the set-aside

portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

(c) *Short-form notice.* Invitations for bids or requests for proposals involving partial set-asides pursuant to this subpart shall contain a notice substantially as set forth in this paragraph or in paragraph (d) of this § 1-1.706-6. The notice used may be appropriately modified to include the applicable specific small business definition.

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more small business concerns. Negotiations for award of this set-aside portion will be conducted only with responsible small business concerns who have submitted responsive bids on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion. Negotiations shall be conducted with such small business concerns in the following order of priority:

Group 1. Small business concerns which are also persistent labor surplus area concerns.

Group 2. Small business concerns which are also substantial labor surplus area concerns.

Group 3. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion. The partial set-aside of this procurement for small business concerns is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair portion of Government procurement is placed with small business concerns.

(b) *Definitions.* (1) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (13 CFR 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided,* That this additional requirement does not apply in connection with construction or service contracts.

(2) The term "labor surplus area" means a geographical area which is a persistent labor surplus area or a substantial labor surplus area, or both, as defined below:

(i) "Persistent labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by the Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial and persistent labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(ii) "Substantial labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(3) The term "labor surplus area concern" includes persistent labor surplus area concerns and substantial labor surplus area concerns as defined below:

(i) "Persistent labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(ii) "Substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in substantial labor surplus areas or in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) *Identification of Areas of Performance.* Each bidder desiring to be considered for award as a small business labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform: *Provided,* That he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Agreement.* The bidder agrees that, if awarded a contract as a small business persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas; and that if awarded a contract as a small business substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as substantial or persistent labor surplus areas.

(End of Notice)

(d) *Long-form notice.* Where it is anticipated that bids may be received which appear designed to take unfair advantage of other bidders, by devices such as unrealistically low bids on mere token quantities, the notice set forth below may be used instead of the short-form notice in (c) of this § 1-1.706-6:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE

(a) *General.* This procurement has been divided into two parts. All concerns, whether small business or not, may participate in accordance with customary procedures in that portion of this procurement herein called the "non-set-aside portion". The quantities of the non-set-aside portion are set forth elsewhere in this Schedule. The other portion of the items to be procured has been set aside for participation by small business concerns. This is called the "set-aside portion" and awards therefor are made in accordance with special procedures set forth in paragraph (c) of this Notice. This apportionment is based on a determination by the Contracting Officer, alone or in conjunction with a representative of the Small Business Administration, that it is in the interest of maintaining or mobilizing the Nation's full productive capacity, or in the interest of war or national defense programs, or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns. "Small business concern" is defined in paragraph (d) of this Notice.

(b) *Non-Set-Aside Portion and Award Procedure.*

(1) A bidder which is not a small business concern shall submit a bid *only* for the non-set-aside portion of the procurement. Award thereof will be made in accordance with customary procedures.

(2) A bidder which is a small business concern and is interested in receiving an award for a quantity of an Item not exceeding the quantity set forth in the non-set-aside portion of the procurement, should submit a bid in the same manner as other concerns bidding only on the non-set-aside portion. If such a bidder is interested in receiving an award for a quantity of an Item in addition to the quantity set forth in the non-set-aside portion, he must bid the entire quantity of the non-set-aside portion of the Item, and indicate such additional quantity of the Item as he desires by so specifying on the Bidder's Statement of Set-Aside Quantity Desired. Thus, the Bidder's Statement of Set-Aside Quantity Desired is not to be used unless the bidder has bid the entire quantity of an Item under the non-set-aside portion.

However, a small business concern which receives no award, or receives an award for less than the total quantity of an Item for which it submitted a bid under the non-set-aside portion, may be eligible for an award of the quantity it bid, or the unawarded quantity thereof, under the following procedure governing the set-aside portion.

(c) *Set-Aside Portion and Award Procedure.* Award of the set-aside portion of this procurement will be made after award has been completed on the non-set-aside portion. It will be made only to small business concerns which are found to be eligible in accordance with (1) below; on the basis of priorities for award set forth in (2) below; for quantities as provided in (3) below; and at prices determined in accordance with (4) below:

(1) *Eligibility.* To be eligible for consideration for the set-aside portion of an Item, the small business concern must have submitted a responsive bid on such Item in accordance with the requirements of (b)(2) above, at a unit price no greater than 120 percent of the highest unit price for such Item awarded under the non-set-aside portion. However, see (5) below when separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(2) *Priorities.* Negotiations for the set-aside portion will be conducted with eligible concerns in the following order of priority:

Group 1. Small business concerns which are also persistent labor surplus area concerns.

Group 2. Small business concerns which are also substantial labor surplus area concerns.

Group 3. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiation for each Item will be conducted with eligible concerns in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. However, see (5) below for the method of determining the bid when separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(3) *Quantity.* The quantity of the set-aside portion of an Item which may be awarded to an eligible concern shall be as follows:

(i) Where a concern has not specified a quantity on the Bidder's Statement of Set-Aside Quantity Desired, the quantity shall be no greater than the quantity of such concern's bid on the non-set-aside portion of that Item, less the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(ii) Where a concern has specified a quantity on the Bidder's Statement of Set-Aside Quantity Desired, the quantity shall be no greater than the total of the entire non-set-aside portion of the Item and the quantity thereof specified on the Bidder's Statement of Set-Aside Quantity Desired, less the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(4) *Price.* The set-aside portion will be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, see (6) and (7) below for the highest unit price when the highest award is made as a result of tie-in bids or all-or-none type of qualification.

(5) *Separate Quantities at Different Prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, without conditioning the Government's right to accept one or more such quantities upon its concurrent acceptance of another quantity of the Item, each separate quantity shall be considered as a separate bid for the purpose of determining the eligibility of the concern with respect to the 120 percent limit prescribed in (c)(1) above, and for the purpose of determining under (c)(2) above, the standing of that bid in the order of negotiations for the set-aside portion of that Item.

(6) *Separate Quantities at Tie-in Prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, and has conditioned the Government's right to accept any one or more of such quantities upon its concurrent acceptance of another quantity of the Item, the weighted average of the prices for such conditioned quantites shall be considered the unit price for the purpose of determining, with respect to such conditioned quantities, (i) the eligibility of the firm with respect to the 120 percent limit of (c)(1) above, (ii) the priority status of the firm under (c)(2) above, and (iii) the highest unit price for awards under (c)(4) above if the highest award on the non-set-aside portion was made on such conditioned bid.

(7) *All or None Bids.* Where a concern has submitted an "all or none" bid for more than one Item and thereby has conditioned the Government's right to award any Item upon its concurrent award of another Item, the unit prices bid for each Item on an "all or none" basis shall be considered independent unit prices for the purpose of determining the eligibility and priority status of the concern for the set-aside portion of each Item. In no event will a set-aside award be made for an Item to such bidder at a higher unit price than his "all or none" unit price bid for the Item on the non-set-aside portion.

(d) *Definitions.* (1) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (13 CFR 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided,* That this additional requirement does not apply in connection with construction or service contracts.

(2) The term "labor surplus area" means a geographical area which is a persistent labor surplus area or a substantial labor surplus area, or both, as defined below:

(i) "Persistent labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial and persistent labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(ii) "Substantial labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(3) The term "labor surplus area concern" includes persistent labor surplus area concerns and substantial labor surplus area concerns as defined below:

(i) "Persistent labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(ii) "Substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in substantial labor surplus areas or in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(e) *Identification of Areas of Performance.* Each bidder desiring to be considered for award as a small business labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform: *Provided,* That he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(f) *Agreement.* The bidder agrees that, if awarded a contract as a small business persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas; and that if awarded a contract as a small business substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as substantial or persistent labor surplus areas.

(g) *Token Bids.* Notwithstanding the provisions of this Notice, the Government reserves the right, in determining eligibility of priority for set-aside negotiations, not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(h) *Instruction for Indicating Portion of Set-Aside Quantity Desired.* The quantity of each Item which has been set aside is set forth on the attached Bidder's Statement of Set-Aside Quantity Desired, which is to be filled in only by small business concerns, as provided in (b)(2) above. Furthermore, it is to be used by such a bidder only when (1) he has submitted a bid for the entire non-set-aside quantity of an Item, and (2) he desires a total quantity in excess of the non-set-aside quantity thereof. Whether or not a small business concern may participate in the set-aside portion is dependent on its eligibility in accordance with (c) above. It should be noted, however, that to be eligible for the set-aside portion the bidder need not have filled in the Bidder's Statement of Set-Aside Quantity Desired. The latter should only be filled in where the bidder desires a quantity in excess of the non-set-aside quantity.

BIDDER'S STATEMENT OF SET-ASIDE QUANTITY DESIRED

1	2	3
Item No.	Quantity Set-Aside	Portion of Set-Aside Quantity Desired

[Columns numbered 1 and 2 will be filled in by the issuing office. Column No. 3 will be left blank for the bidder or offeror to fill in.]

(End of Notice)

(e) *Award procedures*—(1) *Awarding the non-set-aside portion.* Awards of the non-set-aside portion shall be made in accordance with normal procurement procedures.

(2) *Awarding the set-aside portion.* After all awards have been made on the non-set-aside portion, award of the set-aside portion shall be effected by negotiation with eligible concerns as provided in the applicable Notice used. If equal low bids were received on the non-set-aside portion from concerns which are equally eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedures of § 1-2.407-6) shall have first priority with respect to negotiations for the set-aside portion.

§ 1–1.706–7 Automatic dissolution of set-asides.

If the entire set-aside portion is not procured by the method set forth in § 1–1.706–5, as to total set-asides, or § 1–1.706–6, as to partial set-asides, the determination referred to in § 1–1.706–1 is automatically dissolved as to the unawarded portion of the set-aside and such unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with applicable regulations.

§ 1–1.706–8 Contract authority.

(a) *Joint small business set-asides.* Contracts resulting from either total or partial joint small business set-asides (see § 1–3.215), whether entered into by conventional negotiation or by Small Business Restricted Advertising, shall cite as legal authority for negotiation section 302(c)(15) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(15)), the revised Armed Services Procurement Act of 1947 (10 U.S.C. 2304(a)(17)), or other applicable proper authority, together with section 15 of the Small Business Act.

(b) *Unilateral small business set-asides.* Contracts resulting from unilateral small business set-asides shall cite the applicable legal authority for negotiation (see § 1–3.201).

§ 1–1.707 [Reserved]

§ 1–1.708 Certificate of competency program.

§ 1–1.708–1 General.

Pursuant to authority of the Small Business Act (15 U.S.C. 637(b)(7), SBA is empowered to certify to Government procurement officers the competency as to capacity and credit of any small business concern or group of such concerns to perform a specific Government contract. As used in this section, "capacity" means the overall ability of a prospective small business contractor to meet quality, quantity, and time requirements of a proposed contract and includes ability to perform, organization, experience, technical knowledge, skills, "know-how," technical equipment, and facilities.

§ 1–1.708–2 Applicability and procedure.

(a) If a small business concern has submitted an otherwise acceptable bid or proposal but has been found by the contracting officer not to be responsible as to capacity or credit, and if the bid or proposal is to be rejected for this reason alone, SBA shall be notified of the circumstances so as to permit it to issue a certificate of competency, and award shall be withheld pending either SBA issuance of a certificate of competency or the expiration of fifteen working days after SBA is so notified, whichever is earlier, subject to the following:

(1) This procedure is not mandatory where award must be made without delay and the contracting officer includes in the contract file a statement signed by him which justifies immediate action. A copy of the statement shall be furnished the SBA representative.

(2) This procedure does not apply to proposed awards of less than $2,500.

(3) This procedure is optional, within the discretion of the contracting officer, as to proposed awards of more than $2,500, but less than $10,000.

(4) This procedure does not apply where the contracting officer has found a small business concern not to be responsible for a reason other than lack of capacity or credit.

(b) To assist SBA in determining the capacity and credit of small business concerns involved in a particular procurement, the procurement agency shall at the time of notification make available to SBA all pertinent technical and financial information with respect to the small business concern involved, including but not limited to copies of the invitation for bids or request for proposals, drawings, specifications, preaward surveys, and abstracts of bids.

(c) Nothing in this section shall be construed to prevent a contracting officer from selecting, in the first instance, that source of supply offering the highest competence obtainable or the best scientific approach as may be needed, in certain negotiated procurements of research and development, highly complex equipment, or personal or professional services. However, if a small business concern has been selected on the basis of the highest competence obtainable or best scientific approach and, prior to award, the contracting officer determines that the concern is not responsible because of lack of capacity or credit, the certificate of competency procedure in (a) of this § 1–1.708–2 is applicable.

§ 1–1.708–3 Conclusiveness of certificate of competency.

As provided in the Small Business Act (15 U.S.C. 637(b)(7)), procurement agencies are required to accept SBA certificates of competency as conclusive of a prospective contractor's responsibility as to capacity and credit. However, if the contracting officer has substantial doubt as to the firm's ability to perform, he shall, before award, promptly refer the matter to higher authority within the agency in accordance with procedures of the agency concerned. In cases referred to higher authority, SBA may be requested to consider withdrawal of the certificate and, in any event, the contracting officer will be informed of the final decision in the matter.

§ 1–1.709 Records and reports.

Executive agencies shall maintain records of the value of procurement contracts placed with small business concerns. Accordingly, each procuring activity shall, in soliciting bids or proposals, request from any bidder or offeror any information needed to determine whether the bidder or offeror is a small business concern (when Standard Forms 18, 19, 21, 30, and 33 are used, this information is available from the small business representation included on these forms). Agencies shall summarize and report such procurement data on Standard Form 37 (Report on Procurement by Civilian Executive Agencies) in accordance with § 1–16.804.

§ 1–1.710 Subcontracting with small business concerns.

§ 1–1.710–1 General.

(a) It is the policy of the Government to enable small business concerns to be considered fairly as subcontractors and suppliers to contractors performing work or rendering services as prime contractors or subcontractors under Government procurement contracts, and to assure that prime contractors and subcontractors having small business subcontracting programs will consult through the appropriate procuring agency with the Small Business Administration when requested by SBA. However, the Small Business Administration is not authorized to prescribe the extent to which any contractor or subcontractor shall subcontract or specify the concerns to which subcontracts shall be granted, and is not vested with authority respecting the administration of individual prime contracts or subcontracts. (See § 1–1.805 for subcontracting policies with respect to labor surplus area concerns.)

(b) This § 1–1.710 sets forth the program for furtherance of this policy and, together with Subpart 1–3.9, prescribes the contract clauses and procedures for use in carrying out the small business subcontracting program.

(c) As used in this Subpart 1–1.7, the term subcontractor includes a supplier and applies at any level of performance of the contract; and the term subcontract includes a purchase order.

§ 1–1.710–2 Small business subcontracting program.

The Government's small business subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with small business concerns. In contracts which range from $5,000 to $500,000, the contractor undertakes the obligation of accomplishing the maximum amount of small business subcontracting which is consistent with the efficient performance of the contract. This undertaking is set forth in the contract clause prescribed in § 1–1.710–3(a). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause set forth in § 1–1.710–3(b), to undertake a number of specific responsibilities designed to assure that small business concerns are considered fairly in the subcontracting role and to impose similar responsibilities on major subcontractors. (The liaison officer required by the latter clause may also serve as liaison officer for labor surplus area matters.)

§ 1–1.710–3 Required clauses.

(a) The Utilization of Small Business Concerns clause, set forth in this § 1–1.710–3, shall be included in all contracts in amounts which may exceed $5,000 except (1) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico, and (2) contracts for services which are personal in nature:

UTILIZATION OF SMALL BUSINESS CONCERNS

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for sup-

plies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

[End of Clause]

(b) The Small Business Subcontracting Program clause, set forth in this § 1-1.710-3, shall be included in all contracts which may exceed $500,000, which contain the clause required by § 1-1.710-3 (a) and which, in the opinion of the procuring activity, offer substantial subcontracting possibilities. Furthermore, prime contractors who are to be awarded contracts which may not exceed $500,000, but which, in the opinion of the procuring activity, offer substantial subcontracting possibilities, shall be urged to accept this clause.

SMALL BUSINESS SUBCONTRACTING PROGRAM

(a) The Contractor agrees to establish and conduct a small business subcontracting program which will enable small business concerns to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with the Government on small business matters, (ii) supervise compliance with the Utilization of Small Business Concerns clause, and (iii) administer the Contractor's "Small Business Subcontracting Program."

(2) Provide adequate and timely consideration of the potentialities of small business concerns in all "make-or-buy" decisions.

(3) Assure that small business concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of small business concerns. Where the Contractor's lists of potential small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(4) Maintain records showing (i) whether each prospective subcontractor is a small business concern, (ii) procedures which have been adopted to comply with the policies set forth in this clause, and (iii) with respect to the letting of any subcontract (including purchase orders) exceeding $10,000, information substantially as follows:

(A) Whether the award went to large or small business.

(B) Whether less than three or more than two small business concerns were solicited.

(C) The reason for non-solicitation of small business is such was the case.

(D) The reason for small business failure to receive the award if such was the case when small business was solicited.

The records maintained in accordance with (iii) above may be in such form as the Contractor may determine, and the information shall be summarized quarterly and submitted by the purchasing department of each individual plant or division to the Contractor's cognizant small business liaison officer. Such quarterly summaries will be considered to be management records only and need not be submitted routinely to the Government; however, records maintained pursuant to this clause will be kept available for review.

(5) Notify the Contracting Officer before soliciting bids or quotations on any subcontract (including purchase orders) in excess of $10,000 if (i) no small business concern is to be solicited, and (ii) the Contracting Officer's consent to the subcontract (or ratification) is required by a "Subcontracts" clause in this contract. Such notice will state the Contractor's reasons for non-solicitation of small business concerns, and will be given as early in the procurement cycle as possible so that the Contracting Officer may give SBA timely notice to permit SBA a reasonable period to suggest potentially qualified small business concerns through the Contracting Officer. In no case will the procurement action be held up when to do so would, in the Contractor's judgment, delay performance under the contract.

(6) Include the Utilization of Small Business Concerns clause in subcontracts which offer substantial small business subcontracting opportunities.

(7) Cooperate with the Contracting Officer in any studies and surveys of the Contractor's subcontracting procedures and practices that the Contracting Officer may from time to time conduct.

(8) Submit such information on subcontracting to small business concerns as is called for by the Contracting Officer.

(b) A "small business concern" is a concern that meets the pertinent criteria established by the Small Business Administration and set forth in § 1-1.701 of the Federal Procurement Regulations.

(c) The Contractor agrees that, in the event he fails to comply with his contractual obligations concerning the small business subcontracting program, this contract may be terminated, in whole or in part, for default.

(d) The Contractor further agrees to insert, in any subcontract hereunder which may exceed $500,000 and which contains the Utilization of Small Business Concerns clause, provisions which shall conform substantially to the language of this clause, including this paragraph (d), and to notify the Contracting Officer of the names of such subcontractors.

[End of Clause]

§ 1-1.710-4 Review of subcontracting program.

(a) The adequacy of the contractor's "Small Business Subcontracting Program" shall be reviewed by the procuring agency concerned, and any deficiencies shall be brought to the attention of the contractor's liaison officer with a request for corrective action.

(b) Each procuring agency shall assist the SBA to obtain such reasonable obtainable information and records concerning the subcontracting of its prime contractors and its subcontractors, having contracts which contain the Small Business Subcontracting Program clause, as the SBA may deem necessary. Accordingly, the contracting officer may separately or together with a representative of SBA, periodically conduct studies and surveys of the contractor's subcontracting procedures and practices and those of his subcontractors. Such studies and surveys may originate with the procuring agency in order to have available the pertinent data concerning subcontracting by its primes, or, if such data is not currently available, the studies and surveys may originate upon the request of the SBA for such data. On the basis of the foregoing studies, surveys, and records, the SBA may make recommendations to the procuring agency regarding methods for increasing small business participation in the contractor's subcontract awards. SBA and the procuring agency will freely interchange, at the operating level, information resulting from these surveys.

(c) Subcontracting records maintained by Government offices shall be made available for review, as requested, by SBA.

Subpart 1–1.8—Labor Surplus Area Concerns

§ 1–1.800 Scope of subpart.

This subpart sets forth policies and procedures with respect to the placement of contracts in order to aid persistent or substantial labor surplus areas in the United States, its possessions, and Puerto Rico. This subpart implements Defense Manpower Policy No. 4 (Revised), June 6, 1960 (32A CFR Ch. I), and Amendment No. 1, thereto, of December 29, 1962.

§ 1–1.801 Definitions.

§ 1–1.801–1 Labor surplus area concern.

The term "labor surplus area concern" includes persistent labor surplus area concerns and substantial labor surplus area concerns as defined below:

(a) "Persistent labor surplus area concern" means a concern which will perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(b) "Substantial labor surplus area concern" means a concern which will perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in substantial labor surplus areas or in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

§ 1–1.801–2 Labor surplus area.

The term "labor surplus area" means a geographical area which at the time of award is a persistent labor surplus area or a substantial labor surplus area, or both, as defined below:

(a) "Persistent labor surplus area" means an area which (1) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (2) is certified as an area of substantial and persistent labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(b) "Substantial labor surplus area" means an area which (1) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (2) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

§ 1–1.801–3 Small business concern.

For definition of small business concern, see Subpart 1–1.7.

§ 1–1.802 Labor surplus area policies.

§ 1–1.802–1 General policy.

It is the policy of the Government to aid labor surplus areas by placing contracts with labor surplus area concerns, to the extent consistent with procurement objectives and where such contracts can be awarded at prices no higher than those obtainable from other concerns, and by encouraging prime contractors to place subcontracts with concerns which will perform a substantial proportion of the production in labor surplus areas.

§ 1–1.802–2 Specific policies.

To further the general policy, the following specific policies shall be applied to procurements which are estimated to exceed $10,000 and may, if deemed practicable by the contracting officer, be applied to procurements between $2,500 and $10,000:

(a) Best efforts shall be used to award negotiated contracts to labor surplus area concerns. However, in no case may price differentials be paid for the purpose of carrying out this policy.

(b) Procurements shall be set aside for award to labor surplus area concerns in accordance with § 1–1.804.

(1) Where either a partial labor surplus area set-aside or a partial small business set-aside can be appropriately made for any given procurement, the set-aside shall be made for labor surplus area concerns.

(2) In order to accommodate both labor surplus area and small business policies, labor surplus areas set-aside awards shall be made in accordance with the following order of priority: (i) Persistent labor surplus area concerns which are also small business concerns; (ii) other persistent labor surplus area concerns; (iii) substantial labor surplus area concerns which are also small business concerns; (iv) other substantial labor surplus area concerns; and (v) small business concerns which are not labor surplus area concerns.

(c) Procurement agencies shall disseminate promptly to appropriate procurement personnel available publications and other information identifying labor surplus areas and production capabilities therein.

(d) The classification and certification of labor surplus areas by the Department of Labor shall be considered conclusive with respect to the particular procurement concerned.

(e) Concerns located in labor surplus areas, which are on appropriate bidders lists, shall be given the opportunity to submit bids or proposals on all procurements for which they are qualified, except where the procurement has been set aside in its entirety for a specific class of firms, such as small business concerns. Where less than a complete bidders list is to be used, pursuant to § 1–2.205–4, all prospective contractors in labor surplus areas shall be solicited, except that only a pro rata number of prospective labor surplus area concerns need be solicited when the bidders list is composed predominantly of labor surplus area concerns and the estimated award is not expected to be more than $25,000.

(f) Subcontracting with concerns in labor surplus areas shall be encouraged in accordance with § 1–1.805.

(g) In the event of equal low bids, preference shall be given to labor surplus area concerns in accordance with § 1–2.407–6.

(h) Depressed industries shall be assisted in accordance with § 1–1.806.

(i) Procurement agencies shall cooperate with the Departments of Labor and Commerce, the Small Business Administration, and the Office of Emergency Planning to achieve the objectives of this subpart.

(j) Procurement placed in labor surplus areas as a result of preference procedures shall be reported in accordance with § 1–1.807.

§ 1–1.802–3 Buy American Act.

Any preference under the "Buy American Act" due to performance in labor surplus areas (see section 3(c) of Executive Order No. 10582 of December 17, 1954, which prescribes uniform procedures for certain determinations under the Buy American Act) shall be in addition to the assistance accorded pursuant to this subpart.

§ 1–1.803 [Reserved]

§ 1–1.804 Partial set-asides for labor surplus area concerns.

§ 1–1.804–1 General.

(a) In accordance with the policies set forth in § 1–1.802, a portion of each procurement shall be set aside by the contracting officer for labor surplus area concerns if:

(1) The procurement is severable into two or more economic production runs or reasonable lots; and

(2) One or more labor surplus area concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price.

(b) In determining whether a proposed procurement is susceptible to division into two or more economic production runs or reasonable lots, consideration should be given to the following factors and any others deemed appropriate: (1) Price and procurement history of the items, (2) open industry capacity, (3) startup cost including special tooling requirements, (4) delivery schedule, and (5) nature of item and quantity being procured.

Before a portion or portions constituting more than 50 percent of the total requirement may be set aside, a determination must be made that there is a reasonable expectation that the action proposed will not result in the payment of a price differential.

(c) In furtherance of the policy to assure that a fair proportion of the total purchases and contracts are placed with small business concerns, each labor surplus area set-aside shall provide that, in addition to labor surplus area con-

cerns, small business concerns not performing in such areas are also eligible for award of any set-aside quantities not awarded to labor surplus area concerns (see § 1–1.804–2).

(d) None of the following is, in itself, sufficient cause for not making a labor surplus area set-aside:

(1) A large part of previous procurements of the item in question has been placed with labor surplus area concerns;

(2) The item to be purchased is on an established planning list under the Industrial Readiness Planning Program;

(3) The item to be purchased is on a Qualified Products List;

(4) A period of less than thirty days from the date of issuance of invitations for bids or requests for proposals is prescribed for the submission of bids or proposals; or

(5) The procurement is classified.

(e) Where it is determined that a portion of a procurement is to be set aside for labor surplus areas, the procurement shall be divided into a non-set-aside portion and a set-aside portion. Insofar as practical, the set-aside portion will be such as to make the maximum use of the capacity of labor surplus area concerns. Delivery terms and other terms applicable to the set-aside portion of an item and those applicable to the non-set-aside portion of that item shall be comparable.

§ 1–1.804–2 Notice to bidders or offerors.

(a) Invitations for bids or requests for proposals, involving set-asides pursuant to this subpart, shall contain a notice substantially as set forth in either paragraph (b) or (c) of this section. The notice may be modified to include the applicable specific small business definition. The notice used shall be made a part of each contract under the set-aside portion of the procurement.

(b) *Short-form notice.*

NOTICE OF LABOR SURPLUS AREA SET-ASIDE

(a) *General.* A portion of this procurement, as identified elsewhere in the Schedule, has been set aside for award only to one or more labor surplus area concerns, and, to a limited extent, to small business concerns which do not qualify as labor surplus area concerns. Negotiations for award of the set-aside portion will be conducted only with responsible labor surplus area concerns (and small business concerns to the extent indicated below) which have submitted responsive bids or proposals on the non-set-aside portion at a unit price no greater than 120 percent of the highest award made on the non-set-aside portion. Negotiations for the set-aside portion will be conducted with such bidders in the following order of priority:

Group 1. Persistent labor surplus area concerns which are also small business concerns.

Group 2. Other persistent labor surplus area concerns.

Group 3. Substantial labor surplus area concerns which are also small business concerns.

Group 4. Other substantial labor surplus area concerns.

Group 5. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations with such concerns will be in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. The set-aside portion shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion. However, the Government reserves the right not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(b) *Definitions.* (1) The term "labor surplus area" means a geographical area which is a persistent labor surplus area or a substantial labor surplus area, or both, as defined below:

(i) "Persistent labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial and persistent labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(ii) "Substantial labor surplus area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(2) The term "labor surplus area concern" includes persistent labor surplus area concerns and substantial labor surplus area concerns as defined below:

(i) "Persistent labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(ii) "Substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that the concern will incur on acount of manufacturing or production performed in substantial labor surplus areas or in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(3) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (13 CFR 121.3–8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided*, That this additional requirement does not apply in connection with construction or service contracts.

(c) *Identification of Areas of Performance.* Each bidder desiring to be considered for award as a labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform, *provided* that he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(d) *Agreement.* The bidder agrees that, if awarded a contract as a persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas; and that if awarded a contract as a substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as substantial or persistent labor surplus areas.

[End of Notice]

(c) *Long-form notice.* Where it is anticipated that bids may be received which appear designed to take unfair advantage of other bidders, by devices such as unrealistically low bids on mere token quantities, the notice set forth below may be used instead of the short-form notice in paragraph (b) of this section.

NOTICE OF LABOR SURPLUS AREA SET ASIDE

(a) *General.* This procurement has been divided into two parts. All concerns, whether labor surplus area concerns or not, may participate, in accordance with customary procedures, in that portion of this procurement herein called the "non-set-aside portion." The quantities of the non-set-aside portion are set forth elsewhere in this Schedule. The other portion of the Items to be procured has been set aside for participation (1) by labor surplus area concerns and (2) to a limited extent, by small business concerns which do not qualify as labor surplus area concerns. This is called the "set-aside portion" and awards therefor are made in accordance with special procedures set forth in paragraph (c) of this notice. Definitions of labor surplus area, labor surplus area concern, and small business concern are set forth in paragraph (d) of this notice.

(b) *Non-Set-Aside Portion and Award Procedure.* (1) A bidder which is not a labor surplus area concern or is not a small business concern shall submit a bid only for the non-set-aside portion of the procurement. Award thereof will be made in accordance with customary procedures.

(2) A bidder which is a labor surplus area concern or a small business concern and is interested in receiving an award for a quantity of an Item not exceeding the quantity set forth in the non-set-aside portion of this procurement, should submit a bid in the same manner as other concerns bidding only on the non-set-aside portion. If such a bidder is interested in receiving an award for a quantity of an Item in addition to the quantity set forth in the non-set-aside portion, he must bid the entire quantity of the non-set-aside portion of the Item, and indicate such additional quantity of the Item as he desires to furnish by so specifying on the Bidder's Statement of Set-Aside Quantity Desired. Thus, the Bidder's Statement of Set-Aside Quantity Desired is not to be used unless the bidder has bid the entire quantity of an Item under the non-set-

aside portion. However, a labor surplus area concern or small business concern which receives no award, or receives an award for less than the total quantity of an Item for which it submitted a bid under the non-set-aside portion, may be eligible for an award of the quantity it bid, or the unawarded quantity thereof, under the following procedure governing the set-aside portion:

(c) *Set-Aside Portion and Award Procedure.* Award of the set-aside portion of this procurement will be made after award has been completed on the non-set-aside portion. Award will be made only to labor surplus area or small business concerns which are found to be eligible in accordance with (1) below; on the basis of priorities for award set forth in (2) below; for quantities as provided in (3) below; and at prices determined in accordance with (4) below.

(1) *Eligibility.* To be eligible for consideration for the set-aside portion of an Item, the labor surplus area concern or small business concern must have submitted a responsive bid on such Item in accordance with the requirements of (b)(2) above at a unit price no greater than 120 percent of the highest unit price for such Item awarded under the non-set-aside portion. However, see (5) below when separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(2) *Priorities.* Negotiations for the set-aside portion will be conducted with eligible bidders in the following order of priority:

Group 1. Persistent labor surplus area concerns which are also small business concerns.

Group 2. Other persistent labor surplus area concerns.

Group 3. Substantial labor surplus area concerns which are also small business concerns.

Group 4. Other substantial labor surplus area concerns.

Group 5. Small business concerns which are not labor surplus area concerns.

Within each of the above groups, negotiations for each Item will be conducted with eligible concerns in the order of their bids on the non-set-aside portion, beginning with the lowest responsive bid. However, see (5) below for the method of determining the bid when separate quantities are offered at different prices and see (6) below when separate quantities are offered at tie-in prices.

(3) *Quantity.* The quantity of the set-aside portion of an Item which may be awarded to an eligible concern shall be as follows:

(i) Where a concern has not specified a quantity of the Item on the Bidder's Statement of Set-Aside Quantity Desired, the quantity shall be no greater than the quantity of such concern's bid on the non-set-aside portion of that Item, less the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(ii) Where a concern has specified a quantity of the Item on the Bidder's Statement of Set-Aside Quantity Desired, the quantity shall be no greater than the total of the entire non-set-aside portion of the Item and the quantity thereof specified on the Bidder's Statement of Set-Aside Quantity Desired, less the quantity, if any, of that Item awarded to that concern under the non-set-aside portion.

(4) *Price.* The set-aside portion shall be awarded at the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evalulating bids on the non-set-aside portion. However, see (6) and (7) below for the highest unit price when the highest award is made as a result of tie-in bids or all-or-none type of qualification.

(5) *Separate Quantities at Different Prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, without conditioning the Government's right to accept one or more such quantities upon its concurrent acceptance of another quantity of the Item, each separate quantity shall be considered as a separate bid for the purpose of determining the eligibility of the concern with respect to the 120 percent limit prescribed in (c)(1) above, and for the purpose of determining under (c)(2) above the standing of that bid in the order of negotiations for the set-aside portion of that Item.

(6) *Separate Quantities at Tie-in-Prices.* Where a concern has submitted a bid for separate quantities of the non-set-aside portion of an Item at different prices, and has conditioned the Government's right to accept any one or more of such quantities upon its concurrent acceptance of another quantity of the Item, the weighted average of the prices for such conditioned quantities shall be considered the unit price for the purpose of determining, with respect to such conditioned quantities, (i) the eligibility of the firm with respect to the 120 percent limit of (c)(1) above, (ii) the priority status of the firm under (c)(2) above, and (iii) the highest unit price for awards under (c)(4) above if the highest award on the non-set-aside portion was made on such conditioned bid.

(7) *All or None Bids.* Where a concern has submitted an "all or none" bid for more than one Item and thereby has conditioned the Government's right to award any Item upon its concurrent award of another Item, the unit prices bid for each Item on an "all or none" basis shall be considered independent unit prices for the purpose of determining the eligibility and priority status of the concern for the set-aside portion of each Item. In no event will a set-aside award be made for an Item to such bidder at a higher unit price than his "all or none" unit price bid for the Item on the non-set-aside portion.

(d) *Definitions.* (1) The term "labor surplus area" means a geographical area which is a persistent labor surplus area or a substantial labor surplus area, or both, as defined below.

(i) "Persistent Labor Surplus Area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial and Persistent Labor Surplus" (also called "Area of Substantial and Persistent Unemployment") and is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial and persistent labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(ii) "Substantial Labor Surplus Area" means an area which (A) is classified by the Department of Labor as an "Area of Substantial Labor Surplus" (also called "Area of Substantial Unemployment") and which is listed as such by that Department in conjunction with its publication "Area Labor Market Trends," or (B) is certified as an area of substantial labor surplus by the Department of Labor pursuant to a request by a prospective contractor.

(2) The term "labor surplus area concern" includes persistent labor surplus area concerns and substantial labor surplus area concerns as defined below:

(i) "Persistent labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in persistent labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in persistent labor surplus areas if the costs that the concern will incur on account of manufacturing or production performed in such areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(ii) "Substantial labor surplus area concern" means a concern that agrees to perform, or cause to be performed, a substantial proportion of a contract in substantial labor surplus areas. A concern shall be deemed to perform a substantial proportion of a contract in substantial labor surplus areas if the costs that the the concern will incur on account of manufacturing or production performed in substantial labor surplus areas or in substantial and persistent labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the contract price.

(3) A "small business concern" is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria set forth in regulations of the Small Business Administration (13 CFR 121.3-8). In addition to meeting these criteria, a manufacturer or a regular dealer submitting bids or proposals in his own name must agree to furnish in the performance of the contract end items manufactured or produced in the United States, its possessions, or Puerto Rico, by small business concerns: *Provided,* That this additional requirement does not apply in connection with construction or service contracts.

(e) *Identification of Areas of Performance.* Each bidder desiring to be considered for award as a labor surplus area concern on the set-aside portion of this procurement shall identify in his bid the geographical areas in which he proposes to perform, or cause to be performed, a substantial proportion of the production of the contract. If the Department of Labor classification of any such area changes after the bidder has submitted his bid, the bidder may change the areas in which he proposes to perform: *Provided,* That he so notifies the Contracting Officer before award of the set-aside portion. Priority for negotiation will be based upon the labor surplus classification of the designated production areas as of the time of the proposed award.

(f) *Agreement.* The bidder agrees that, if awarded a contract as a persistent labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as persistent labor surplus areas; and that if awarded a contract as a substantial labor surplus area concern under the set-aside portion of this procurement, he will perform, or cause to be performed, a substantial proportion of the production in areas classified at the time of award, or at the time of performance of the contract, as substantial or persistent labor surplus areas.

(g) *Token Bids.* Notwithstanding the provisions of this Notice, the Government reserves the right, in determining eligibility or priority for set-aside negotiations, not to consider token bids or other devices designed to secure an unfair advantage over other bidders eligible for the set-aside portion.

(h) *Instruction for Indicating Portion of Set-Aside Quantity Desired.* The quantity of each Item which has been set aside is set forth on the attached Bidder's Statement of Set-Aside Quantity Desired, which is to be filled in only by labor surplus area concerns and small business concerns, as provided in (b)(2) above. Furthermore, it is to be used by such a bidder only when (1) he has submitted a bid for the entire non-set-aside quantity of an Item, and (2) he desires a total quantity in excess of the non-set-aside quantity thereof. Whether or not a labor surplus area concern or small business concern may participate in the set-aside portion is dependent on its eligibility in ac-

cordance with (c) above. It should be noted, however, that to be eligible for the set-aside portion the bidder need not have filled in the Bidder's Statement of Set-Aside Quantity Desired. The latter should only be filled in where the bidder desires a quantity in excess of the non-set-aside quantity.

BIDDERS' STATEMENT OF SET-ASIDE QUANTITY DESIRED

1 Item No.	2 Set-aside quantity	3 Portion of set-aside quantity desired

[Columns numbered 1 and 2 will be filled in by the issuing office. Column No. 3 will be left blank for the bidder or offeror to fill in.]

[End of Notice]

§ 1–1.804–3 Award procedures.

(a) *Awarding the non-set-aside portion.* Awards on the non-set-aside portion shall be made in accordance with normal procurement procedures.

(b) *Awarding the set-aside portion.* (1) After all awards have been made on the non-set-aside portion, award of the set-aside portion shall be effected by negotiation with eligible concerns as provided in the applicable Notice used. To determine whether a concern is eligible for preferential consideration as a labor surplus area concern the area classification of the Department of Labor in effect at the time of the award shall be used. Contracts for the set-aside portion shall specify the preferential status of the bidder or offeror on which the award was based.

(2) If equal low bids were received on the non-set-aside portion from concerns which are eligible for the set-aside portion, the concern which is awarded the non-set-aside portion (under the equal low bid procedures of § 1–2.407–6) shall have the first priority with respect to negotiations for the set-aside portion.

(c) *Non-awarded set-aside portion.* If any part of the set-aside quantity cannot be awarded by the method described in this § 1–1.804, any unawarded portion may be procured by advertising or negotiation, as appropriate, in accordance with existing regulations. A record of the reasons for failure to award the set-aside portion to labor surplus area concerns shall be included in the contract file.

§ 1–1.804–4 Withdrawal of set-asides.

If, prior to the award of a contract involving a labor surplus set-aside, the contracting officer considers that the set-aside is detrimental to the public interest, e.g., because of unreasonable prices, the contracting officer shall withdraw the set-aside and complete the procurement by advertising or negotiation, as appropriate, in accordance with existing regulations. A record of the reasons for the withdrawal of any set-aside shall be made and included in the contract file.

§ 1–1.804–5 Contract authority.

Contracts for set-asides made under this subpart shall cite as legal authority for negotiation section 302(c)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(1)), the revised Armed Services Procurement Act of 1947 (10 U.S.C. 2304(a)(1)), or other applicable proper authority (see § 1–3.201).

§ 1–1.805 Subcontracting with labor surplus area concerns.

§ 1–1.805–1 General.

(a) In furtherance of the general policy stated in § 1–1.802, procuring agencies shall encourage prime contractors to place subcontracts with concerns which will perform a substantial proportion of the production in areas of labor surplus, where this can be done consistent with efficient performance of contracts and at prices no higher than are obtainable elsewhere. (See § 1–1.710 for subcontracting policies with respect to small business concerns.)

(b) As used in this Subpart 1–1.8, the term subcontractor includes a supplier and applies at any level of performance of the contract; and the term subconract includes a purchase order.

§ 1–1.805–2 Labor surplus area subcontracting program.

The Government's labor surplus area subcontracting program requires Government prime contractors to assume an affirmative obligation with respect to subcontracting with labor surplus area concerns. In contracts which range from $5,000 to $500,000, the contractor undertakes the obligation of using his best efforts to place his subcontracts with concerns which will perform such subcontracts substantially in areas of labor surplus, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. This undertaking is set forth in the contract clause prescribed in § 1–1.805–3(a). In contracts which may exceed $500,000, the contractor is required, pursuant to the clause set forth in § 1–1.805–3(b), to undertake a number of specific responsibilities designed to assure achievement of the objectives referred to above and to impose similar responsibilities on major subcontractors.

§ 1–1.805–3 Required clauses.

(a) The "Utilization of Concerns in Labor Surplus Areas" clause, set forth below, shall be inserted in all contracts in amounts which may exceed $5,000, except—

(1) Contracts with foreign contractors which, including all subcontracts thereunder, are to be performed entirely outside the United States, its possessions, and Puerto Rico;

(2) Contracts for services which are personal in nature; and

(3) Contracts for construction.

UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS

It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus, where this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (a) persistent labor surplus area concerns which are also small business concerns; (b) other persistent labor surplus area concerns; (c) substantial labor surplus area concerns which are also small business concerns; (d) other substantial labor surplus area concerns; and (e) small business concerns which are not labor surplus area concerns.

[End of Clause]

(b) The "Labor Surplus Area Subcontracting Program" clause, set forth below, shall be included in all contracts which may exceed $500,000, which contain the clause required by § 1–1.805–3(a) and which, in the opinion of the procuring activity, offer substantial subcontracting possibilities. Furthermore, prime contractors who are to be awarded contracts which may not exceed $500,000 but which, in the opinion of the procuring activity, offer substantial subcontracting possibilities, shall be urged to accept this clause.

LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

(a) The Contractor agrees to establish and conduct a program which will encourage labor surplus area concerns to compete for subcontracts within their capabilities. In this connection, the Contractor shall—

(1) Designate a liaison officer who will (i) maintain liaison with duly authorized representatives of the Government on labor surplus area matters, (ii) supervise compliance with the Utilization of Concerns in Labor Surplus Areas clause, and (iii) administer the Contractor's "Labor Surplus Area Subcontracting Program";

(2) Provide adequate and timely consideration of the potentialities of labor surplus area concerns in all "make-or-buy" decisions;

(3) Assure that labor surplus area concerns will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of labor surplus area concerns;

(4) Maintain records showing procedures which have been adopted to comply with the policies set forth in this clause; and

(5) Include the Utilization of Concerns in Labor Surplus Areas clause in subcontracts which offer substantial labor surplus area subcontracting opportunities.

(b) A "labor surplus area concern" is a concern which will perform, or cause to be performed, a substantial proportion of any contract awarded to it in "Areas of Substantial Labor Surplus" (also called "Areas of Substantial Unemployment"), as designated by the Department of Labor. A concern shall be deemed to perform a substantial proportion of a contract in a labor surplus area if the costs that the concern will incur on account of manufacturing or production performed in persistent or substantial labor surplus areas (by itself or its first-tier subcontractors) amount to more than 50 percent of the price of such contract.

(c) The Contractor further agrees to insert, in any subcontract hereunder which may exceed $500,000 and which contains the Utilization of Concerns in Labor Surplus Areas clause, provisions which shall conform substantially to the language of this clause, including this paragraph (c), and to notify the Contracting Officer of the names of such subcontractors.

[End of Clause]

§ 1–1.805–4 Review of subcontracting program.

The adequacy of the contractor's "Labor Surplus Area Subcontracting Program" shall be reviewed by the procuring agency concerned, and any deficiencies shall be brought to the attention of the contractor's liaison officer with a request for corrective action.

§ 1–1.806 Depressed industries.

§ 1–1.806–1 General.

When an entire industry is depressed, the Office of Emergency Planning may, under Defense Manpower Policy No. 4, establish appropriate measures on an industry-wide, rather than on an area, basis. Designations of such industries are made by Office of Emergency Planning Notifications, and such industries will be given special treatment as specified therein. Sections 1–1.806–2 through 1–1.806–5 reflect pertinent requirements of such Notifications with respect to the industries indicated. No price differentials will be paid to carry out policies of these Notifications. Executive agencies shall report on procurement from these industries in accordance with § 1–1.807.

§ 1–1.806–2 Apparel industry (Notification No. 53).

(a) Notification No. 53, concerning the apparel industry, was issued July 19, 1952 (17 F.R. 6675). As used in this section, the term "apparel industry" means all of the industry identified in the "Standard Industrial Classification Manual," issued by the Bureau of the Budget, under Major Group 23, except Group No. 239.

(b) There shall be no labor surplus area set-asides in this industry. Where feasible, under the same invitation, bids should be requested for jackets or coats and trousers as separate items so that bidders may bid in combinations of units, and if requirements warrant, at least an equal quantity of trousers should be included.

§ 1–1.806–3 Petroleum and petroleum products industry (Notification No. 58).

Notification No. 58, concerning placement of procurement contracts with the petroleum and petroleum products industry, was issued October 10, 1952 (17 F.R. 9053), and exempts the petroleum and petroleum products industry from the application of Defense Manpower Policy No. 4. Accordingly, there shall be no labor surplus area set-asides in this industry.

§ 1–1.806–4 Shipbuilding industry (Notification No. 57).

(a) Notification No. 57, concerning placement of procurement contracts with the shipbuilding industry, was issued August 28, 1952 (17 F.R. 7868) in the interest of preserving the skills and maintaining the productive facilities of the shipbuilding industry. As used in this paragraph, the "shipbuilding industry" includes establishments primarily engaged in building all types of ships, barges, canal boats and lighters of five gross tons and over, whether propelled by sail or motor power or towed by other craft. Establishments primarily engaged in fabricating structural assemblies or components for ships, or subcontractors engaged in ship painting, joinery, carpentry work, electrical wiring installation, etc., are not included.

(b) There shall be no labor surplus area set-asides in this industry. In placing shipbuilding contracts, preference shall be given, where practicable, to contractors which can perform the contracts without substantial use of overtime labor and without constructing new facilities. Also, to spread work among a larger number of private yards, bids or proposals shall be invited, and contracts awarded, on a small-lot basis rather than on a large-lot basis, to the extent practicable.

§ 1–1.806–5 Textile industry (Notification No. 38).

(a) Notification No. 38, concerning placement of procurement contracts with the textile industry, was issued June 4, 1952 (17 F.R. 4993). As used in this section, the term "textile industry" means all of the industry identified in the "Standard Industrial Classification Manual" under Major Group 22 (Textile Mill Products) and Industry Nos. 2391 and 2392 (curtains and draperies, and house-furnishings), except that it does not include industry No. 2298 (cordage and twine).

(b) No preference shall be given to any area or city in placing conrtacts in this industry. For the purpose of maintaining the effective functioning of the textile industry as a whole, procuring activities shall try to place contracts with manufacturers whose weaving operations (in the case of weaving or integrated mills) or whose spinning operations (in the case of spinning mills) during the period of performance of such contracts will not exceed 80 hours per week (not including other supporting activities).

(c) In all procurements from the textile industry which are estimated to exceed $10,000, partial set-asides, exclusively for textile industry concerns whose "weaving" or "spinning" operations (as described in paragraph (b) above) will not exceed 80 hours per week, shall be made substantially in accordance with the procedures set forth in § 1–1.804, except that all "textile industry concerns whose weaving or spinning operations will not exceed 80 hours per week" will be treated as "labor surplus area concerns." The notice set forth in § 1–1.804–2 shall be designated "NOTICE OF 80-HOUR WEEK SET-ASIDE" and appropriately modified for use in accordance with this paragraph.

§ 1–1.807 Report on preference procurement in labor surplus areas.

(a) *Agencies required to report.* Each agency which places contracts to be performed in surplus labor areas under this Subpart 1–1.8 and § 1–2.407–6 shall report such procurement in accordance with this section. When procurement is performed by one agency for, and at the request of, another agency, the agency doing the procurement shall report.

(b) *Frequency and due date.* Reports shall be prepared quarterly and submitted, in triplicate, to the General Services Administration, Office of Finance and Administration, General Services Building, Washington 25, D.C., within 45 work days after the close of each calendar quarter. Agencies having no reportable procurement during any report period shall submit negative reports.

(c) *Preparation of report.* (1) *Procurement to be reported.* Reports shall state the total dollar amount of procurement awards placed in labor surplus areas as a result of preference procedures under this Subpart 1–1.8 and § 1–2.407–6. Amendments and modifications shall be included to reflect the total value of such actions. Agencies entering into indefinite quantity contracts to be performed in labor surplus areas as a result of preference procedures shall estimate, in accordance with agency procedures, the total dollar amount of orders which will be placed thereunder and include such data in the report.

(2) *Report format.* No standard report form is prescribed. However, the data reported should be arranged in columns as follows:

Column 1: An alphabetical listing of the States (include for this purpose Puerto Rico and possessions) containing persistent or substantial labor surplus areas in which contracts awarded during the report period as the result of set-aside, tie-bid, or other preference procedure will be performed.

Column 2: An alphabetical listing, within each State, of persistent or substantial labor surplus areas in which such contracts will be performed. Underline the names of persistent labor surplus areas.

Column 3: For each area, the total dollar amount of such contract awards.

Total: Enter subtotal of all figures for persistent labor surplus areas and a grand total of Column 3.

(3) *Procurement from textile industry (Notification No. 38).* In addition to the requirements of subparagraph (2) above, any preference awards placed with the textile industry during the report period under the provisions of § 1–1.806–5, shall be reported as an addendum, and include the following information:

(i) Dollar amount of such awards placed with concerns which will perform in persistent or substantial labor surplus areas.

(ii) Dollar amount of such awards placed with concerns which will not perform in persistent or substantial labor surplus areas.

Subpart 1–1.9—Reporting Possible Antitrust Violations

§ 1–1.901 General.

(a) Section 302(d) of the Federal Property and Administrative Services Act of 1949 requires, with respect to advertised procurement, that bids be referred to the Attorney General for appropriate action when in the opinion of the agency head they evidence any violation of the antitrust laws. The referral of such bids shall be in accordance with this Subpart 1–1.9.

(b) Where proposals received in competitive negotiated procurements evidence violations of the antitrust laws, the procedures in this Subpart 1–1.9 may be used in referring such proposals to the Attorney General.

(c) The reports required by this subpart are in addition to and are not to be considered as satisfying the requirements of Subpart 1–1.16 for reporting identical bids to the Attorney General.

§ 1–1.902 Documents to be transmitted.

In reporting cases of possible violations of the antitrust laws to the Attorney General, each agency shall transmit, in addition to a copy of each suspect bid, the documents and statements enumerated below (the expression "suspect bids" or variations thereof, as used in this Subpart 1–1.9, shall be deemed to include any bids which indicate practices which may evidence possible violations of the antitrust laws including collusive bidding, follow-the-leader pricing, rotated low bids, identical bids, or any other bid device intended to deprive the Government of the benefit of full and free competition):

(a) One copy of the invitation for bids and any amendments thereto.

(b) An abstract of all bids received for each item covered by the bid invitation for which suspect bids were received, showing for each such item—

(1) The unit and total price bid.

(2) The net price to the Government after discounts and allowance for transportation, or other costs, are absorbed by the bidder.

(3) The name of the manufacturer of the item or the source of supply if the bidder is a dealer or distributor, and the location of the plant from which shipment will be made. Where identical bids are filed by dealers, distributors, or jobbers representing the same manufacturer or supplier, they frequently indicate adherence to the supplier's list or suggested price to the Government. Unless the procurement agency has some evidence that such identical bids resulted from collusion or concert of action among the bidders they need not be reported to the Attorney General.

(4) The destination of shipments, and whether the price quoted includes or excludes the cost of transportation to destination.

(5) The identity of the successful bidder, and, where identical low bids were submitted by several bidders, an indication of how the award was made.

(c) Copies of documents filed by suspect bidders as part of the bid submission or obtained by the procuring agency such as the following—

(1) Contracts with contingent fee representatives who acted on behalf of one or more of the bidders who submitted identical bids or assisted them in the preparation of their bids.

(2) Correspondence or other evidence of patent rights owned or licensed by bidders quoting identical prices.

(3) Evidence of the existence of financial or other ties between bidders submitting suspect bids as revealed by Dun and Bradstreet or other reliable financial reports.

(4) Any pertinent financial or corporate information concerning the suspect bids as may be contained in financial statements or annual reports to stockholders.

(d) Copies of reports containing the findings of any special investigations conducted by the procurement agency concerning the bids reported.

(e) Copies of any correspondence between the procurement agency and the suspect bidders revealing the factors responsible for the filing of suspect bids, or explaining the prices bid.

§ 1–1.903 Additional information.

In addition to the documentary matter described above, the following information must be submitted, or appropriate remarks made, to the degree available, with respect to each suspected antitrust violation:

(a) Where there is a prior pattern of procurement of the item for which suspect bids were received, indicate the procurement agency's annual dollar value of purchases of the item in each of the three calendar years preceding the year in which the suspect bids were received.

(b) With respect to purchases of the item in prior years, submit an abstract of all suspect bids received in response to each invitation for bids issued in the preceding three-year period, setting forth in such abstract the information described in § 1–1.902. If this information was submitted with a prior reference of identical bids to the Attorney General it will be necessary only to state that the information was submitted with a suspect bid reference of a specified date.

(c) Indicate whether the pattern of bidding in the three-year period preceding the receipt of the suspect bids reported appears to indicate such practices as bid rotation, sharing of the business, collusive bidding, or any other form of joint action. If such practices are indicated, explain in detail.

(d) If there are any known financial, personal, or other than personal relationships among any of the suspect bidders, describe them.

(e) Indicate if the Government's specifications for the item are so drawn that only a limited number of potential bidders are capable of meeting these specifications.

(f) Indicate whether the item is covered by active patents and if such patents are owned or controlled by any of the suspect bidders. If information is available, submit full details, including any evidence that patent control may have a bearing on price identity.

(g) If there are any known manufacturers or suppliers of the item who consistently avoid bidding on Government contracts, identify such suppliers or manufacturers and indicate whether the procurement agency has any knowledge as to the reasons why these firms avoid seeking Government business.

(h) Indicate if the prices bid by the suspect bidders are their published list prices or if they are prices applicable only to the particular bid. If the prices quoted by the suspect bidders are not their published list prices, state whether they appear to have been arrived at by the application of a uniform Government discount from list prices or by some other method of computation. If available, furnish photostatic copies of suspect bidders' and other bidders' price lists.

(i) Indicate whether it is known to be the general practice of the manufacturers of the item to adhere to pricing systems which may be characterized as delivered pricing, zone pricing, or basing point pricing. If the answer is in the affirmative, describe the nature of the pricing system used.

(j) Indicate whether, in the opinion of the procurement agency, the suspect or tie bids submitted appear to stem from collusion or conspiracy on the part of the suspect bidders, and, if so, explain the basis for this opinion.

Subpart 1–1.10—Publicizing Procurement Actions

§ 1–1.1001 General policy.

Proposed procurements which offer competitive opportunities for prospective prime contractors or subcontractors shall be publicized as prescribed in this Subpart 1–1.10, to increase competition, thus assisting small business and labor surplus area concerns and broadening industry participation in Government procurement programs.

§ 1–1.1002 Availability of invitations for bids and requests for proposals.

A reasonable number of copies of each invitation for bids and request for proposals publicized in the Department of Commerce Synopsis (see § 1–1.1003–1), including specifications and other pertinent information, shall be maintained by the issuing office. To the extent such unclassified invitations for bids and requests for proposals are available, they shall be provided upon request to manufacturers, construction contractors, and regular dealers and to others having a legitimate interest therein, such as publishers, trade associations, procurement information services and others who disseminate information concerning invitations for bids and requests for proposals; otherwise the procuring activity may limit the availability of invitations for bids and requests for proposals to perusal at the issuing office. With regard to classified procurements, this § 1–1.1002 applies to the extent consistent with agency security requirements.

§ 1–1.1003 Synopses of proposed procurements.

§ 1–1.1003–1 Department of Commerce Synopsis.

(a) The "Commerce Business Daily, Synopsis of U.S. Government Proposed Procurement, Sales and Contract Awards," informally known as "Department of Commerce Synopsis" or "Synopsis," is published daily, except Saturdays, Sundays, and holidays, by the U.S. Department of Commerce, Chicago, Illinois. Section 8 of the Small Business Act (15 U.S.C. 637(e)) empowers the Secretary of Commerce to obtain notice of certain proposed procurement actions from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the Department of Commerce Synopsis immediately after the necessity for the procurement is established.

(b) The primary purpose of the Department of Commerce Synopsis is to provide industry with information concerning current Government contracting and subcontracting opportunities, including information as to the identity and location of Government contracting offices and prime contractors having current or potential need for certain types of products or services.

(c) The Department of Commerce Synopsis is available on an annual subscription basis, and subscriptions can be entered at any Department of Commerce office. Complimentary subscriptions are available to participating Government activities upon request.

(d) Procurement agencies shall develop procedures for assuring that proposed procurements are publicized in the Synopsis as required by this § 1–1.1003.

§ 1–1.1003–2 General requirements.

(a) In accordance with section 8 of the Small Business Act, all proposed defense procurement actions of $10,000 and above, and all proposed civilian agency procurement actions of $5,000 and above, will be publicized promptly in the Department of Commerce Synopsis, except that the following need not be so publicized:

(1) Procurements of a classified nature where the information necessary to be included or referenced in the solicitation (invitation for bids or request for proposals) is in itself of a classified nature and the public disclosure of this information would violate security requirements. All other classified procurements shall be published in the Synopsis if sufficient information of an unclassified nature can be provided in the solicitation to enable a prospective contractor to submit a bid or proposal;

(2) Procurements of perishable subsistence;

(3) Procurements which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made;

(4) Procurements which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 calendar days after issuance of the invitation for bids or request for proposals or the date of transmittal of the synopsis, whichever is earlier;

(5) Procurements which are made by an order placed under an existing contract;

(6) Procurements which are made from another Government department or agency, or a mandatory source of supply;

(7) Procurements which are for personal or professional services;

(8) Procurements which are for services from educational institutions;

(9) Procurements in which only foreign sources are to be solicited; or

(10) Procurements for which it is determined in writing by the procuring agency, with the concurrence of the Administrator of the Small Business Administration, that advance publicity is not appropriate or reasonable.

(The term "defense procurement actions," as used in this § 1–1.1003–2, shall apply only to procurements made by the Department of Defense.)

(b) The dollar amount specified in § 1–1.1003–2(a) is not a prohibition against publicizing procurements below that amount where it is determined that such publication would be advantageous to industry or to the Government.

§ 1–1.1003–3 Research and development.

Advance notices of the Government's interest in a given field of research and development shall be published in the Synopsis in accordance with § 1–1.1003–7(b)(7), except where security considerations prohibit such publication. Such notices will enable potential sources to learn of research and development programs and provide such sources with an adequate opportunity to submit information which will permit evaluation of their research and development capabilities. Each specific procurement of research and development shall be publicized in the Synopsis unless (a) one of the exceptions in § 1–1.1003–2 is applicable, or (b) an advance notice has been published in the Synopsis and such notice was sufficiently specific to permit potential sources to request solicitations for the procurement.

§ 1–1.1003–4 Synopses of subcontract opportunities.

Prime contractors and subcontractors should be encouraged to use the Synopsis to publicize opportunities in the field of subcontracting stemming from Government business. Prime contractors and their subcontractors will be advised to mail subcontract information directly to the U.S. Department of Commerce, Administrative Service Office, Room 1300, 433 West Van Buren Street, Chicago, Illinois, 60607, in format ready for printing.

§ 1–1.1003–5 Pre-invitation notices.

Where pre-invitation notices are used (see § 1–2.205–4), the pre-invitation information shall be included in the Synopsis. The information need not be republished in the Synopsis when the invitation for bids is subsequently issued.

§ 1–1.1003–6 Time of publicizing.

To allow concerns which are not on current bidders lists ample time to prepare bids or proposals, procuring activities should, when feasible, publicize proposed procurements before issuance of invitations for bids and requests for proposals. Prompt reporting is particularly important when a short time for submitting bids or proposals is involved.

§ 1–1.1003–7 Preparation and transmittal.

(a) Procuring activities shall transmit synopses of proposed procurements as follows:

(1) When teletypewriter service is available, synopses shall be forwarded as frequently as practical each day via teletypewriter covering invitations for bids and requests for proposals or quotations issued on that day, or at the earliest practical time prior to the issuance of such invitations and requests as is deemed appropriate, to the following address: Synopsis, U.S. Department of Commerce, Administrative Service Office, Chicago, Illinois.

(2) When teletypewriter service is not available, synopses normally shall be sent by airmail or ordinary mail, whichever is considered more expeditious, addressed as follows: U.S. Department of Commerce (Synopsis), Administrative Service Office, Room 1300, 433 West Van Buren Street, Chicago, Illinois 60607. This address should be used also when commercial telegraph facilities are used.

(b) Each synopsis message shall be prepared as described below:

(1) *Spacing.* Except as provided in § 1–1.1003–7(b)(4), lines in the text will begin flush with the left margin and will not exceed 69 typewritten spaces in length. Double spaced lines will be used in the text. Each procurement shall be described in a separate paragraph.

(2) *Message number.* The first line of the message text will state the "transmittal number" of the message being sent. Synopses will be numbered consecutively by the reporting activity during the calendar year, using a new series of numbers beginning with number one for the first message of each calendar year.

(3) *Contracting office and address.* The name and address of the contracting office will begin on the second line of the message text and continue straight across the page and on the subsequent line or lines if necessary. No abbreviations are to be used except for the name of the State. The address may include an attention phrase directed to an official by name, title, or reference code.

(4) *Description of procurements.* The appropriate classification code (see § 1–1.1005 and subparagraph (5) of this § 1–1.1003–7(b)) for each proposed procurement of supplies and services shall begin five spaces from the left margin followed by two hyphens and the description of the procurement. As used in this Subpart 1–1.10, the term "supplies" includes materials and equipment. The description shall be in narrative form, double spaced, with each succeeding line commencing flush with the left margin. The description shall be clear, concise, and in such detail that it will be understood by interested parties. Descriptions shall include, as appropriate, commonly used names of supply items, basic materials from which fabricated, general size or dimensions, citations of specification and drawing numbers, quantities, units of measure, invitation for bid or request for proposal numbers, opening dates, places of delivery, and other pertinent data. Where a term or indefinite quantity contract is involved, the description should so indicate and, where applicable, include a statement as to the duration of the contract period. If an item is covered by one or more specifications requiring qualification testing and approval, and such requirement has not been waived, the notation "QPL" shall be inserted immediately following the specification number. Federal stock numbers should be included where one has been assigned. Only standard, commonly understood abbreviations may be used. For purposes of clarity, two hyphens should be used instead of punctuation marks to separate quantities, purchase reference numbers, opening dates, and other elements of the description. Copies of the Commerce Business Daily will be helpful as a guide in preparing messages.

(5) *Several items on one invitation for bids or request for proposals.* Where several items are included in the same invitation for bids or request for proposals, a blanket statement such as "The following described items are to be procured under Invitation for Bids (or Request for Proposals) No. _____, Opening Date _____" should be inserted following the classification code and preceding the description of the items. If more than one class of supplies or services is involved, enter the code for the class accounting for the largest dollar volume of the procurement.

(6) *Procurements involving set-asides.* If the proposed procurement involves a small business set-aside (see § 1–1.706) or labor surplus area set-aside (see § 1–1.804), the synopsis message shall—

(i) Where there is a 100 percent small business set-aside, state that "The proposed procurement(s) listed herein is (are) totally set aside for small business." Separate messages should be sent covering those proposed procurements which involve 100 percent small business set-asides in order to facilitate proper identification in the synopsis.

(ii) Where there is a partial small business or labor surplus area set-aside, state that "An additional quantity of

_____
(Insert number of units and description)

is being reserved for _____

_____
(Insert "small business" or "labor surplus area," as appropriate)

concerns under a partial set-aside determination."

(7) *Research and development item.* Notices which invite the submission of information as to research and development capabilities in given fields of interest shall be headed "Research and Development Sources Sought." This shall be followed by a statement similar to the following: "Firms having research and development capabilities in the field

of _____, and whose facilities
(Be specific)

and personnel include _____

_____,
(Describe in substantial detail minimum facilities and personnel required)

are invited to submit complete information to the procuring office listed above. Information furnished should include the total number of employees and professional qualifications of scientists, engineers, and technical personnel; a description of general and special facilities; an outline of previous projects; a statement regarding industrial security clearance, if previously granted; and other available descriptive literature. This is not a request for a proposal."

§ 1–1.1004 Synopses of contract awards.

Awards of all unclassified contracts to be performed in whole or in part within the United States, exceeding $25,000 in amount, shall be publicized in the Department of Commerce Synopsis (see § 1–1.1003–1). This dollar amount is not a prohibition against publicizing smaller awards where it is determined that such publication would be advantageous to industry or to the Government.

§ 1–1.1004–1 Preparation and transmittal.

(a) Procuring activities shall transmit synopses of contract awards by airmail or ordinary mail, whichever is considered more expeditious, before the close of business at the end of each week, addressed as follows: U.S. Department of Commerce, Administrative Service Office, Ref. CA, Room 1300, 433 West Van Buren Street, Chicago, Illinois, 60607.

(b) Each synopsis message shall be prepared as described below:

(1) Spacing shall be as stated in § 1–1.1003–7(b)(1).

(2) The contracting office and address will be shown as described in § 1–1.1003–7(b)(3).

(3) The appropriate classification code (see § 1–1.1005) for each contract award shall begin five spaces from the left margin and be followed by two hyphens and the common name of the supplies or services. If a contract covers more than one class of supplies or services, enter the code for the class which accounts for the largest dollar amount. Immediately following the common name, using full lines across the page, enter the contract number, the number of the invitation for bids or request for proposals (in parenthesis), the quantity, unit, and dollar amount for each item, and the name and address of the contractor. The quantity, unit, and dollar amount for individual items of $25,000 or less in a single award need not be shown. In lieu thereof, a statement, such as "various items" or "20 items" or "items 3, 5, 6, 7, 9, 16, 20, and 23", followed by the total dollar amount of the award for such items, may be used.

(4) When requested by the prime contractor, a statement will be included regarding the industries, crafts, processes, or component items in or for which subcontracts are available and subcontractors are desired, together with the general area, if any, indicated by the prime contractor, such as Southeast States, West Coast, New England.

§ 1–1.1005 Classification codes.

The classification codes to be shown in synopses messages, as required by § 1–1.1003–7(b)(4) for proposed procurements and § 1–1.1004–1(b)(3) for contract awards, shall be in accordance with this § 1–1.1005. Services (including construction and experimental, developmental, test, and research work) shall be coded with the applicable letter code set forth in § 1–1.1005–1. Supplies shall be coded with the applicable two-digit numerical code set forth in § 1–1.1005–2.

§ 1–1.1005–1 Codes for services.

The code letters to be used for services are as follows:

Code	*Description of Services*
A	Experimental, Developmental, Test, and Research Work (research includes both basic and applied research).
J	Maintenance and Repair of Equipment.
K	Modification, Alteration, and Rebuilding of Equipment.
L	Technical Representative Services (Example: Services of technical specialists required to advise and assist with respect to the installation, checking, operation, and maintenance of complex equipment).
M	Operation and Maintenance of Government-Owned Facility.

Code	Description of Services
N	Installation of Equipment (use code K if the procurement also involves modification, alteration, or rebuilding of the equipment).
P	Salvage Services (services required to salvage property of any kind).
Q	Medical Services.
R	Architect, Engineer, Expert, and Consultant Services.
S	Housekeeping Services— Examples: Utility services (gas, electric, telephone, etc.). Laundry and dry cleaning services. Custodial—janitorial service. Insect and rodent control. Packing and crating. Storage services. Garbage and trash collection. Food service. Fueling service. Fire protection. Building and grounds maintenance. Care of remains—funeral services. Guard services.
T	Photographic, Mapping, Printing, and Publication Services— Examples: Film processing. Cataloging. Charting. Reproduction. Technical writing. Art. Printing.
U	Training Services.
V	Transportation Services. Examples: Passenger and cargo transportation. Vessel charter. Vessel operation. Tug service. Stevedoring service. Vehicle hire. Railway equipment charter.
W	Lease or Rental, Except Transportation Equipment. Examples: Lease of ADP or EAM equipment. Lease of earth-moving equipment.
Y	Construction (includes construction, alteration, and repair of buildings, structures, and other improvements to real property, including roads, bridges, tunnels, sewers, power lines, railways, docks, levees, and canals).
Z	Miscellaneous (includes services which do not fall within any of the above).

§ 1–1.1005–2 Codes for supplies.

The two-digit code numbers to be used for supplies are as set forth below. The numbers and descriptions used are the same as the 76 assigned commodity groups of the Federal Supply Classification system as shown in the Cataloging Handbook, H 2–1, Federal Supply Classification, Part 1, Groups and Classes. This handbook, together with Cataloging Handbooks H 2–2 (Numeric Index of Classes) and H 2–3 (Alphabetic Index), will be helpful in determining the proper code to be assigned to supply items in synopses messages. These handbooks may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

Code	Description of Supplies
10	Weapons.
11	Nuclear Ordnance.
12	Fire Control Equipment.
13	Ammunition and Explosives.
14	Guided Missiles.
15	Aircraft; and Airframe Structural Components.
16	Aircraft Components and Accessories.
17	Aircraft Launching, Landing, and Ground Handling Equipment.
18	Space Vehicles.
19	Ships, Small Craft, Pontoons, and Floating Docks.
20	Ship and Marine Equipment.
22	Railway Equipment.
23	Motor Vehicles, Trailers, and Cycles.
24	Tractors.
25	Vehicular Equipment Components.
26	Tires and Tubes.
28	Engines, Turbines, and Components.
29	Engine Accessories.
30	Mechanical Power Transmission Equipment.
31	Bearings.
32	Woodworking Machinery and Equipment.
34	Metalworking Machinery.
35	Service and Trade Equipment.
36	Special Industry Machinery.
37	Agricultural Machinery and Equipment.
38	Construction, Mining, Excavating, and Highway Maintenance Equipment.
39	Materials Handling Equipment.
40	Rope, Cable, Chain, and Fittings.
41	Refrigeration and Air-Conditioning Equipment.
42	Fire Fighting, Rescue, and Safety Equipment.
43	Pumps and Compressors.
44	Furnace, Steam Plant, and Drying Equipment; and Nuclear Reactors.
45	Plumbing, Heating, and Sanitation Equipment.
46	Water Purification and Sewage Treatment Equipment.
47	Pipe, Tubing, Hose, and Fittings.
48	Valves.
49	Maintenance and Repair Shop Equipment.
51	Hand Tools.
52	Measuring Tools.
53	Hardware and Abrasives.
54	Prefabricated Structures and Scaffolding.
55	Lumber, Millwork, Plywood, and Veneer.
56	Construction and Building Materials.
58	Communication Equipment.
59	Electrical and Electronic Equipment Components.
61	Electric Wire, and Power and Distribution Equipment.
62	Lighting Fixtures and Lamps.
63	Alarm and Signal Systems.
65	Medical, Dental, and Veterinary Equipment and Supplies.
66	Instruments and Laboratory Equipment.
67	Photographic Equipment.
68	Chemicals and Chemical Products.
69	Training Aids and Devices.
71	Furniture.
72	Household and Commercial Furnishings and Appliances.
73	Food Preparation and Serving Equipment.
74	Office Machines and Data Processing Equipment.
75	Office Supplies and Devices.
76	Books, Maps, and Other Publications.
77	Musical Instruments, Phonographs, and Home-Type Radios.
78	Recreational and Athletic Equipment.
79	Cleaning Equipment and Supplies.
80	Brushes, Paints, Sealers, and Adhesives.
81	Containers, Packaging, and Packing Supplies.
83	Textiles, Leather, and Furs.
84	Clothing and Individual Equipment.
85	Toiletries.
87	Agricultural Supplies.
88	Live Animals.
89	Subsistence.
91	Fuels, Lubricants, Oils, and Waxes.
93	Nonmetallic Fabricated Materials.
94	Nonmetallic Crude Materials.
95	Metal Bars, Sheets, and Shapes.
96	Ores, Minerals, and Their Primary Products.
99	Miscellaneous.

Subpart 1–1.11—Qualified Products

§ 1–1.1101 Procurement of qualified products.

(a) Whenever qualified products are to be procured only bids or proposals offering products which have been qualified prior to the opening of advertised bids or the award of negotiated contracts shall be considered in making an award. Manufacturers having products which have been qualified but which are not yet included on the qualified products list involved, should be given consideration and an opportunity to offer evidence of such qualification in the time interval before award must be made. (Other instructions concerning establishment of qualified products lists, qualification of products, etc., are contained in General Services Administration Regulation 1–VI, Part 2.)

(b) Whenever procurement of qualified products is to be made by formal advertising, the following provision shall be inserted in invitations for bids:

QUALIFIED PRODUCTS

With respect to products described in this invitation as requiring qualification, awards will be made only for such products as have, prior to the time set for opening of bids, been tested and approved for inclusion in the qualified products list identified below. Manufacturers who wish to have a product tested for qualification are urged to communicate with the office designated below. Manufacturers having products not yet listed, but which have been qualified, are requested to submit evidence of such qualification with their bids, so that they may be given consideration.

[Identify the Qualified Products List involved and give the name and address of the office with which manufacturers should communicate.]

(c) The provision in § 1–1.1101(b) shall be appropriately modified and used in requests for proposals when procurement of qualified products is to be made by negotiation.

Subpart 1–1.12 [Reserved]

Subpart 1–1.13 [Reserved]

Subpart 1–1.14 [Reserved]

Subpart 1–1.15 [Reserved]

Subpart 1–1.16—Reports of Identical Bids

§ 1–1.1601 General.

(a) This Subpart 1–1.16, developed cooperatively with the Department of Justice, prescribes procedures for submitting reports to the Attorney General in accordance with Executive Order No. 10936 of April 24, 1961 (3 CFR, 1961 Supp., pp. 104–106), when identical bids are received in connection with the procurement of personal property or nonpersonal services (including construction).

(b) The purpose of the Executive order is to discourage identical bidding; to reduce the costs of the Government; to aid in the enforcement of the antitrust laws and the maintenance of a competitive economy; and to provide the Attorney General such information as may tend to establish the presence of a conspiracy in restraint of trade and which may warrant further investigation with a view to preferring civil or criminal charges.

(c) The reports required by this subpart are in addition to and are not to be considered as satisfying the requirements of Subpart 1–1.9 for reporting cases of possible antitrust law violations to the Attorney General.

§ 1–1.1602 Definitions.

As used in this Subpart 1–1.16, the following terms shall have the meanings set forth:

(a) "Identical bids" means two or more bids for the same line item which:

(1) Are identical on their face (disregarding the application of evaluation factors such as discount and transportation cost) as to unit price or total line item amount; or

(2) Are found, in the normal process of evaluating bids for award, to be identical as to unit price or total line item amount. (Line item evaluation computations beyond those normally made to determine the low acceptable bidder are not required.)

(b) "Line item" means a procurement item (as defined in § 1–1.220) specified in an invitation for bids which, under the terms of the invitation, is susceptible to a separate contract award.

(c) "Bid value" means the dollar amount computed by multiplying the line item quantity specified in the invitation for bids by the lowest unit price bid for the line item. Where a line item quantity is not specified in the invitation, as in the case of requirements type or indefinite quantity type contracts, the bid value of the line item is the dollar amount computed by multiplying the estimated line item quantity by the lowest unit price bid for the line item.

§ 1–1.1603 Reporting requirements.

§ 1–1.1603–1 Cases to be reported.

(a) A report shall be submitted by executive agencies to the Attorney General as provided in this § 1–1.1603 whenever (1) the total bid value of all line items covered by an invitation for bids issued under formal advertising procedures, or under small business restricted advertising procedures (see § 1–1.701–9), exceeds $10,000, and (2) identical bids have been received on at least one line item having a bid value of more than $2,500. However, a report will not be submitted where bids are received only from foreign sources in response to invitations for bids requiring delivery and performance outside the United States, its possessions, and the Commonwealth of Puerto Rico.

(b) Reports are required on reportable identical bids regardless of whether an award is made on the line item, the invitation is canceled, or some other disposition is made after bid opening. Line items on which identical bids are received are not reportable if the bid value of the line item is $2,500 or less. Likewise, line items on which no identical bids are received are not reportable.

§ 1–1.1603–2 Preparation of reports.

(a) Identical bid reports shall be made on U.S. Department of Justice Form DJ–1500, Identical Bid Report for Procurement (for illustration of the form, see § 1–16.903–DJ1500). Form DJ–1500 is available in pads of 100 at General Services Administration supply depots (Federal Stock No. 7540–823–7870). Instructions for filling out the form are printed on the cover of each pad of forms.

(b) All bids on each line item on which reportable identical bids are received shall be shown on the report whether or not the identical bids were the low bids.

§ 1–1.1603–3 Submission of reports.

(a) Identical bid reports shall be sent to the Attorney General within 20 days

following the disposition of all bids received in response to the invitation for bids, whether by the awarding of one or more contracts or other action.

(b) Two completed copies of each identical bid report, together with one copy of the invitation for bids and one copy of the completed abstract of bids, shall be sent to the Attorney General, Ref. AT-IBR, Washington, D.C., 20530. When the number of line items on an invitation exceeds 100, a copy of the abstract of bids need not be furnished. In such cases, however, the identical bid report shall be annotated to indicate the number of line items and the number of bidders on the invitation.

(c) A copy of each identical bid report shall be retained by the reporting activity.

§ 1–1.1604 Supplemental requests by Attorney General.

The Attorney General may, from time to time, request such supplemental information with respect to identical bid reports submitted to him as he may deem necessary for effective enforcement of antitrust laws.

§ 1–1.1605 Information to be obtained from bidders.

§ 1–1.1605–1 Invitation for bids provision.

A provision substantially as follows shall be inserted in all invitations for bids for the procurement of personal property or nonpersonal services (including construction) under either formal advertising procedures or small business restricted advertising procedures where it is estimated that the total bid value of all line items covered by the invitation may exceed $10,000:

PARENT COMPANY AND EMPLOYER IDENTIFICATION NUMBER

Each bidder shall furnish the following information by filling in the appropriate blocks:

(a) Is the bidder owned or controlled by a parent company as described below? Yes ☐ No ☐

(For the purpose of this bid, a parent company is defined as one which either owns or controls the activities and basic business policies of the bidder. To own another company means the parent company must own at least a majority (more than 50 percent) of the voting rights in that company. To control another company, such ownership is not required; if another company is able to formulate, determine, or veto basic business policy decisions of the bidder, such other company is considered the parent company of the bidder. This control may be exercised through the use of dominant minority voting rights, use of proxy voting, contractual arrangements, or otherwise.)

(b) If the answer to (a) above is "Yes," bidder shall insert in the space below the name and main office address of the parent company.

(Name)

(Address)

(c) Bidder shall insert in the applicable space below, if he has no parent company, his own employer's identification number (E.I. No.) (Federal social security number used on employer's quarterly Federal tax return, U.S. Treasury Department Form 941), or, if he has a parent company, the E.I. No. of his parent company.

Bidder's E.I. No. ------

Parent Company's E.I. No. ------

§ 1–1.1605–2 Failure to provide information.

(a) If a bid does not contain the information called for by the invitation for bids provision in § 1–1.1605–1 and an identical bid report is required under § 1–1.1603–1, one inquiry shall be made of the bidder in an effort to obtain the information. If the information is not available after inquiry, the identical bid report shall be annotated so to indicate.

(b) Failure to provide information concerning employer identification number or parent company relationship shall not be considered a basis for rejection of bids.

PART 1–2—PROCUREMENT BY FORMAL ADVERTISING

Sec.
1–2.000 Scope of part.

Subpart 1–2.1—Use of Formal Advertising

1–2.101 Meaning of formal advertising.
1–2.102 Policy.
1–2.103 General requirements for formally advertised contracts.
1–2.104 Types of contracts.
1–2.104–1 General.
1–2.104–2 Firm fixed-price contracts.
1–2.104–3 Fixed-price contracts with escalation.
1–2.104–4 Indefinite delivery-type contracts.
1–2.105 Solicitation for informational or planning purposes.

Subpart 1–2.2—Solicitation of Bids

1–2.201 Preparation of invitations for bids.
1–2.202 Miscellaneous rules for solicitation of bids.
1–2.202–1 Bidding time.
1–2.202–2 Telegraphic bids.
1–2.202–3 Place and method of delivery of supplies.
1–2.202–4 Bid samples.
1–2.202–5 Descriptive literature.
1–2.203 Methods of soliciting bids.
1–2.203–1 Mailing or delivering to prospective bidders.
1–2.203–2 Displaying in public places.
1–2.203–3 Publicity in newspapers and trade journals.
1–2.203–4 Synopses of invitations for bids.
1–2.204 Records of invitations for bids and records of bids.
1–2.205 Bidders mailing lists.
1–2.205–1 Establishment of lists.
1–2.205–2 Removal of names from bidders mailing lists.
1–2.205–3 Reinstatement on bidders mailing lists.
1–2.205–4 Excessively long bidders mailing lists.
1–2.205–5 Release of bidders mailing lists.
1–2.206 Small business and labor surplus area set-asides.
1–2.207 Amendment of invitations for bids.
1–2.208 Cancellation of invitations before opening.
1–2.209 Qualified products.

Subpart 1–2.3—Submission of Bids

1–2.301 Responsiveness of bids.
1–2.302 Time of bid submission.
1–2.303 Late bids.
1–2.303–1 General.
1–2.303–2 Consideration for award.
1–2.303–3 Mailed bids.
1–2.303–4 Telegraphic bids.
1–2.303–5 Hand-carried bids.
1–2.303–6 Notification to late bidders.
1–2.303–7 Disposition of late bids.
1–2.303–8 Records.
1–2.304 Modification or withdrawal of bids.
1–2.305 Late modifications and withdrawals.

Subpart 1–2.4—Opening of Bids and Award of Contract

1–2.401 Receipt and safeguarding of bids.
1–2.402 Opening of bids.
1–2.403 Recording of bids.
1–2.404 Rejection of bids.
1–2.404–1 Cancellation of invitation after opening.
1–2.404–2 Rejection of individual bids.
1–2.404–3 Notice to bidders of rejection of all bids.
1–2.404–4 Restrictions on disclosure of descriptive literature.
1–2.404–5 All or none qualifications.
1–2.405 Minor informalities or irregularities in bids.
1–2.406 Mistakes in bids.
1–2.406–1 General.
1–2.406–2 Apparent clerical mistakes.
1–2.406–3 Other mistakes disclosed before award.
1–2.406–4 Disclosure of mistakes after award.
1–2.407 Award.
1–2.407–1 General.
1–2.407–2 Responsible bidder.
1–2.407–3 Discounts.
1–2.407–4 Price escalation.
1–2.407–5 Other factors to be considered.
1–2.407–6 Equal low bids.
1–2.407–7 Statement and certificate of award.
1–2.407–8 Protests against award.
1–2.408 Information to bidders.
1–2.409 Synopses of contract awards.

Subpart 1–2.5—Two-Step Formal Advertising

1–2.501 General.
1–2.502 Conditions for use.
1–2.503 Procedures.
1–2.503–1 Step One.
1–2.503–2 Step Two.

AUTHORITY: The provisions of this Part 1–2 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1–2.000 Scope of part.

This part sets forth (a) the basic requirements for procurement of personal property and nonpersonal services (including construction) by formal advertising, (b) the information to be contained in solicitations of bids, (c) methods in soliciting bids, (d) policies with respect to the submission of bids, and (e) requirements with respect to the opening and evaluation of bids and the awarding of contracts.

Subpart 1–2.1—Use of Formal Advertising

§ 1–2.101 Meaning of formal advertising.

Formal advertising means procurement by competitive bids and awards, as prescribed in this Part 1–2, and involves the following basic steps:

(a) Preparation of the invitations for bids, describing the requirements of the Government clearly, accurately, and completely, but avoiding unnecessarily restrictive specifications or requirements which might unduly limit the number of bidders. The term "invitation for bids" means the complete assembly of related documents (whether attached or incorporated by reference) furnished prospective bidders for the purpose of bidding.

(b) Publicizing the invitation for bids through distribution to prospective bidders, posting in public places, and such other means as may be appropriate, in sufficient time to enable prospective bidders to prepare and submit bids before the time set for public opening of bids.

(c) Submission of bids by prospective contractors.

(d) Awarding the contract, after bids are publicly opened, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered.

§ 1–2.102 Policy.

Procurement shall be made by formal advertising whenever such method is feasible and practicable under the existing circumstances even though such conditions and circumstances would otherwise satisfy the requirements of subpart 1–3.2. In accordance with this requirement, procurements shall generally be made by soliciting bids from all qualified sources of supplies or services deemed necessary by the contracting officer to assure full and free competition consistent with the procurement of the required property or services. Current lists of bidders shall be maintained in accordance with § 1–2.205.

§ 1–2.103 General requirements for formally advertised contracts.

No contract shall be deemed to have been made by formal advertising unless:

(a) Bids have been solicited as required by Subpart 1–2.2;

(b) Bids have been submitted as required by Subpart 1–2.3; and

(c) Determination has been made as to the responsible bidder (see § 1–1.310) whose bid is responsive to the invitation for bids and is most advantageous to the Government, price and other factors considered, and award is made as prescribed in Subpart 1–2.4.

§ 1–2.104 Types of contracts.

§ 1–2.104–1 General.

Procurement contracts awarded after formal advertising shall be of the firm fixed-price type, except that fixed-price contracts with escalation may be used where some flexibility is necessary and feasible.

§ 1–2.104–2 Firm fixed-price contracts.

See § 1–3.404–2.

§ 1–2.104–3 Fixed-price contracts with escalation.

Escalation clauses are not normally desirable, but in appropriate cases clauses providing for upward and downward revision of prices may be used, in accordance with § 1–3.404–3, in order to protect the interest of both the Government and contractor. In addition, where the contracting officer, on the basis of his knowledge of the market or previous advertisements for like items, expects that a requirement for firm fixed-price bids will unnecessarily restrict competition or unreasonably increase bid prices, invitation for bids may include an escalation clause approved by the agency concerned. Any escalation clause shall provide an escalation ceiling identical for all bidders so that each bidder is afforded an equal opportunity to bid on the escalation basis. In evaluating bids, see § 1–2.407–4.

§ 1–2.104–4 Indefinite delivery-type contracts.

(a) Definite quantity contracts. (See § 1–3.405–5(a).)

(b) Requirements contracts. (See § 1–3.405–5(b).)

(c) Indefinite quantity contracts. (See § 1–3.405–5(c).)

§ 1–2.105 Solicitation for informational or planning purposes.

See § 1–1.314.

Subpart 1–2.2—Solicitation of Bids

§ 1–2.201 Preparation of invitations for bids.

Forms used in inviting bids are prescribed in Subparts 1–16.1 and 1–16.4. Invitations for bids shall contain the applicable information in paragraphs (a) and (b) of this § 1–2.201, and any other information required for a particular procurement.

(a) For supply and service contracts, including construction, invitations for bids shall contain the following information if applicable to the procurement involved.

(1) Invitation number.

(2) Name and address of issuing activity.

(3) Date of issuance.

(4) Date, hour, and place of opening. (Prevailing local time shall be used. See § 1–2.202–1 concerning bidding time.)

(5) Number of pages.

(6) Where required by agency procedures, requisition or other purchase authority, and appropriation and accounting data.

(7) A description of supplies or services to be furnished under each item in sufficient detail to permit full and free competition. Such description shall comply with §§ 1–1.305 and 1–1.307.

(8) The time of delivery or performance requirements (see § 1–1.316).

(9) Permission, if any, to submit telegraphic bids (see § 1–2.202–2).

(10) Permission, if any, to submit alternative bids, including alternative material or design.

(11) [Reserved]

(12) Bid guarantee, performance and payment bond requirements, if any. If a bid guarantee is required, see instructions in § 1–10.102–2.

(13) Any authorized special provisions relating to Government-furnished property proposed to be furnished for the performance of the contract.

(14) Where the contracting officer has reason to believe that Government property may be employed, a provision that if the bidder plans to use, in performing the work bid upon, any items of Government property in the bidder's possession under a facilities contract or other agreement independent of the invitation for bids, the bidder shall so state in the bid and, upon request of the contracting officer, submit evidence that a facilities contract or other separate agreement authorizes the bidder to use each item of such Government property for performing the work bid upon.

(15) When considered necessary by the contracting officer, a requirement that all bids must allow a period for acceptance by the Government of not less than a minimum period stipulated in the invitation for bids, and that bids offering less than the minimum stipulated acceptance period will be rejected. The minimum period so stipulated should be no more than reasonably required for evaluation of bids and other preaward processing. To accomplish the foregoing, a paragraph substantially as follows may be included in the invitation for bids:

Bid acceptance period. Bids offering less than ------ days for acceptance by the Government from the date set for opening will be considered nonresponsive and will be rejected.

(16) In unusual cases, where bidders are required to have special technical qualifications due to the complexity of the equipment being procured or for some other special reason, a statement of such qualifications.

(17) Any authorized special provisions, necessary for the particular procurement, relating to such matters as progress payments, patent licenses, liquidated damages, escalation, Buy American Act, etc.

(18) Any additional contract provisions or conditions required by law or regulation.

(19) Any applicable wage determinations of the Secretary of Labor (for construction, alteration, or repair contracts).

(20) If Government costs or expenditures other than bid prices are to be considered in the evaluation of bids, such factors must be identified and included.

(21) If the invitation for bids contains a price escalation clause, include a provision reflecting the requirements of § 1–2.407–4(b).

(22) Directions for obtaining copies of any documents, such as plans, drawings, and specifications, which have been incorporated by reference.

(23) Pending revision of paragraph 4 of the Terms and Conditions of the Invitation for Bids on the back of Standard Form 30 (October 1957 edition) and Standard Form 33 (October 1957 edition), the following provision shall be substituted, as to each form, for the cited paragraph:

Late bids and modifications or withdrawals. (a) Bids and modifications or withdrawals thereof received at the office designated in the Invitation for Bids after the exact time set for opening of bids will not be considered unless: (1) They are received before award is made; and either (2) they are sent by registered mail or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, or by telegraph if authorized, and it is determined by the Government that the late receipt was due solely to delay in the mails, or delay by the telegraph company, for which the bidder was not responsible; or (3) if submitted by mail (or by telegram if authorized), it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation: *Provided,* That timely receipt at such installation is established upon examination of an appropriate date or time stamp (if any) of such installation, or of other documentary evidence of receipt (if readily available) within the control of such installation or of the post office serving it. However, a modification which makes the terms of the otherwise successful bid more favorable to the Government will be considered at any time it is received and may thereafter be accepted.

(b) Bidders using certified mail are cautioned to obtain a Receipt for Certified Mail showing a legible, dated postmark and to retain such receipt against the chance that it will be required as evidence that a late bid was timely mailed.

(c) The time of mailing of late bids submitted by registered or certified mail shall be deemed to be the last minute of the date shown in the postmark on the registered mail receipt or registered mail wrapper or on the Receipt for Certified Mail unless the bidder furnishes evidence from the post office station of mailing which establishes an earlier time. In the case of certified mail, the only acceptable evidence is as follows: (1) where the Receipt for Certified Mail identifies the post office station of mailing, evidence furnished by the bidder which establishes that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or (2) an entry in ink on the Receipt for Certified Mail showing the time of mailing and the initials of the postal employee receiving the item and making the entry, with appropriate written verification of such entry from the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark on the original Receipt for Certified Mail does not show a date, the bid shall not be considered.

(24) A statement that the Equal Opportunity clause is not applicable to contracts (i) not exceeding $10,000, (ii) where work is to be performed entirely outside the United States and no recruitment of workers within the United States is involved, (iii) for standard commercial supplies or raw materials not exceeding $100,000, or (iv) specifically exempted by the Executive Vice Chairman of the President's Committee on Equal Employment Opportunity, with the approval of the Secretary of Labor.

(25) A statement substantially as follows (prominently placed in the invitation):

Caution to bidders—Late bids. See the special provision entitled "Late Bids and Modifications or Withdrawals" which provides that late bids and modifications or withdrawals thereof sent through the mails ordinarily will be considered ONLY IF TIMELY MAILED BY REGISTERED MAIL OR BY CERTIFIED MAIL FOR WHICH A POSTMARKED RECEIPT HAS BEEN OBTAINED AS SPECIFIED IN SUCH PROVISION.

(26) Pending revision of paragraph 10 of the Terms and Conditions of the Invitation for Bids on the back of Standard Form 30 (October 1957 edition) and Standard Form 33 (October 1957 edition), the following shall be substituted, as to each form, for the cited paragraph:

Definition of Small Business. A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.)

(27) A provision in accordance with § 1–1.1605–1 concerning parent company relationship and employer identification number.

(28) The Certification of Noncollusion, as required by § 1–1.317.

(b) For supply and services contracts, excluding construction, invitations for bids shall contain the following, in addition to the information required by § 1–2.201(a), if applicable to the procurement involved.

(1) Discount provisions (see § 1–2.407–3).

(2) The quantity of supplies or services to be furnished under each item,

and any provision for quantity variation.

(3) Any requirement for prior testing and qualification of a product, when the item to be purchased is on a qualified products list (see Subpart 1–1.11).

(4) When needed for the purpose of bid evaluation, pre-award surveys, or inspection, a requirement that bidders state the place (including the street address) from which the supplies will be furnished or where the services will be performed. Where it is reasonably anticipated that producing facilities will be used in the performance of the contract, or where the Government requires the information, bidders will be required to state (a) the full address of principal producing facilities (if designation of such address is not feasible, a full explanation will be required) and (b) names and addresses of owner and operator, if other than bidder.

(5) Place and method of delivery (see § 1–2.202–3).

(6) Preservation, packaging, packing, and marking requirements, if any.

(7) Place, method, and conditions of inspection.

(8) If no award will be made for less than the full quantities advertised, a statement to that effect.

(9) If award is to be made by specified groups of items or in the aggregate, a statement to that effect.

(10) If the invitation for bids gives the Government an option to increase or decrease quantities specified, a statement of the maximum percentage of such increase or decrease.

(11) Any applicable requirements for samples or descriptive literature (see §§ 1–2.202–4 and 1–2.202–5).

(12) Any requirement for preproduction samples or tests, including a statement that the Government reserves the right to waive the requirement as to those bidders offering a product which has been previously procured or tested by the Government, and a statement that bidders offering such products, who wish to rely on such prior procurement or test, must furnish with the bid information from which it may be clearly established that prior Government approval is presently appropriate for the pending procurement.

(13) Pending revision of paragraph 6 of the Terms and Conditions of the Invitation for Bids on the back of Standard Form 30 (October 1957 edition) and Standard Form 33 (October 1957 edition), the following provision shall be substituted, as to each form, for the cited paragraph:

Labor information. If a contract resulting from this Invitation for Bids is subject to the Walsh-Healey Public Contracts Act, a minimum wage determination under the Act is applicable to all employees of the contractor who are engaged in the manufacture or furnishing of the supplies required under the contract. Information in this connection as well as general information regarding requirements of the Act concerning overtime payment, child labor, safety and health, etc., should be obtained from the Wage and Hour and Public Contracts Divisions, Department of Labor, Washington, D.C., 20210, or from any of the Divisions' offices throughout the various states. It is important that requests for information include the Invitation number, name and address of the issuing agency, and a description of the supplies.

§ 1–2.202 Miscellaneous rules for solicitation of bids.

§ 1–2.202–1 Bidding time.

(a) *Policy.* Consistent with the needs of the Government for obtaining the supplies or services, all invitations for bids shall allow sufficient bidding time (i.e., the period of time between the date of distribution of an invitation for bids and the date set for opening of bids) to permit prospective bidders to prepare and submit bids. This will facilitate competition on reasonable and equal terms. Undue limitation of bidding time tends to restrict competition. Also, when prospective bidders do not have adequate time for computing prices and obtaining needed information on which to base their bids, higher prices to the Government may result from inclusion of unnecessary contingency allowances or the unwillingness of some to submit bids.

(b) *Factors to be considered.* The urgency of the Government's need for the items or services, the complexity of the invitation, the extent of subcontracting anticipated, the use of pre-invitation notices, the geographic distribution of bidders, the normal time for mail transmission of both invitations and bids, and other related factors, must be considered in establishing bidding time. For example, a bidding time of 30 days may be inadequate when bidders are required to prepare special drawings, designs, and samples, or to obtain quotations from several suppliers and subcontractors, as frequently is the case in construction and production contracts. Conversely, a bidding time of 15 days may be adequate when bids would reasonably be expected to be based on stocks-on-hand, or current regular production, or service personnel and facilities regularly available (as in the case of maintenance and repair of structures, and similar work.)

(c) *Minimum bidding time.* As a general rule, bidding time shall be not less than 15 calendar days when procuring standard commercial articles and services and not less than 30 calendar days when procuring other than standard commercial articles or services. This rule need not be observed in special circumstances, or where the urgency for the supplies or services does not permit such delay. Procurement activities shall develop procedures for assuring that these bidding time requirements are observed.

§ 1–2.202–2 Telegraphic bids.

As a general rule, telegraphic bids will not be authorized. However, when in the judgment of the contracting officer the date set for opening of bids will not allow bidders sufficient time to prepare and submit bids on the prescribed forms, or when prices are subject to frequent changes, telegraphic bids may be authorized. When such bids are authorized the invitation for bids shall require the bidder to include in the telegraphic bid specific reference to the invitation, the items or sub-items, quantities, and unit prices for which the bid is submitted, the time and place of delivery, and a statement that the bidder agrees to all the terms, conditions, and provisions of the invitation. In order that the contract may be executed on the proper forms, the invitation for bids will also provide that telegraphic bids should be confirmed on the prescribed form and submitted promptly to the contracting officer.

§ 1–2.202–3 Place and method of delivery of supplies.

(a) Invitations for bids solicited f.o.b. origin shall state that bids will be evaluated on the basis of bid price plus transportation cost to the Government from point of origin to one or more designated destinations.

(b) Invitations for bids solicited f.o.b. origin or destination shall include as much of the following information as is pertinent to the particular procurement and shall require bidders to furnish the Government such of the following information as may be appropriate:

(1) Method of shipment, such as rail, water, air, or truck.

(2) Minimum quantities or lots, such as less than carload, less than truck load, carload, or truck load. (Where appropriate, the invitation should elicit information of the minimum size of shipments which the prospective supplier will make, so that freight evaluation may be on a realistic basis. The supplier should be cautioned that, if it ships in lesser quantities, it may be charged with any excess costs resulting.)

(3) *Guaranteed shipping weight.* Bidders should be required to furnish information regarding shipping weight and cube of items to be procured so that proper transportation costs can be computed. (The bidder should be cautioned that, if actual shipping weights or cubes vary from the guarantees, it may be charged with any excess costs resulting.)

(4) Packing, crating, and other preparations.

(5) *Transit privileges.* (Traffic management personnel can furnish necessary information and analysis of situations where transit privileges may be beneficial.)

(6) Any other shipping information required for evaluation.

(c) When the exact destination of the supplies being purchased is not known at the time bids are solicited, but the general geographical section in which delivery will be made is known, such as East Coast, Middle West, or West Coast, for purposes of evaluation of bids only, a definite place(s) or zone(s) shall be designated in the known geographical sector of delivery as the place to which transporation costs will be computed in determining the low bidder. The invitation should specify that bids will be submitted f.o.b. origin and that shipment will be made on Government bill of lading. So that prospective bidders may understand the method of evaluation to be used, the invitation shall contain a provision substantially as follows:

For the purpose of evaluating bids (and for no other purpose), the final destinations for the supplies will be considered to be as follows: [insert destination(s)].

§ 1–2.202–4 Bid samples.

(a) *Definition.* The term "bid sample" means a sample required by the invitation for bids to be furnished by a bidder as a part of his bid to show the characteristics of a product offered in his bid. The term does not include any type of sample submitted after bid opening such as one submitted to evidence a manufacturer's ability to produce.

(b) *Policy.* Bidders shall not be required to furnish a bid sample of a product they propose to furnish unless there are certain characteristics of the product which cannot be described adequately in the applicable specification or purchase description, thus necessitating the submission of a sample to assure procurement of an acceptable product. It may be appropriate to require bid samples, for example, where the procurement is of products that must be suitable from the standpoint of balance, facility of use, general "feel," color, or pattern, or that have certain other characteristics which cannot be described adequately in the applicable specifications. However, where more than a minor portion of the characteristics of the product cannot be adequately described in the specification, the product should be procured by negotiation in accordance with § 1–3.210.

(c) *Justification.* The reasons why acceptable products cannot be procured without the submission of bid samples shall be set forth and filed in the case file, except where such submission is required by the formal specifications (Federal, military, departmental, etc.) applicable to the procurement.

(d) *Requirements of invitation for bids.* When bid samples are required, the invitation for bids shall (1) state the number and, if appropriate, the size of the samples to be submitted and otherwise fully describe the samples required; (2) state clearly the purpose for which the samples are needed and the requirements against which they will be tested or evaluated; and (3) include a provision in accordance with (e) of this § 1–2.202–4. Where samples are not considered necessary and a waiver of the sample requirements of a specification has been authorized, a statement shall be included in the invitation for bids that notwithstanding the requirements of the specifications, samples will not be required.

(e) *Invitation for bids provision.* When bid samples are required, a provision substantially as follows (modified, if appropriate, in accordance with (f) of this section) shall be included in the invitation for bids:

BID SAMPLES

(a) Bid samples, in the quantities, sizes, etc., required for the items so indicated in this Invitation for Bids, must be furnished as a part of the bid and must be received before the time set for opening bids. Samples will be evaluated to determine compliance with the specifications or other requirements of this Invitation for Bids.

(b) Failure of samples to conform to the requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish samples by the time specified in the Invitation for Bids will require rejection of the bid, except that a late sample transmitted by mail may be considered under the provision for considering late bids, as set forth elsewhere in this Invitation for Bids.

(c) Products delivered under any resulting contract shall conform to the approved sample as to the characteristics for which the sample was required and shall conform to the specifications as to all other characteristics.

(f) *Waiver of requirement for bid samples.*

(1) The provision prescribed in (e) of this section may be modified to provide that the requirement for furnishing samples may be waived as to a bidder who offers a product previously or currently being procured or tested by the procuring activity and found to comply with specification requirements conforming in every material respect with those in the current invitation for bids so that further evaluation or testing would not add to the Government's knowledge of the acceptability of the product. When provision is to be made for such waiver, the invitation for bids provision in (e) of this section shall be modified by adding substantially the following at the end of paragraph (b) thereof:

However, the requirement for furnishing samples may be waived as to a bidder if (1) the bidder states in his bid that the product he is offering to furnish is the same as a product he has offered to the [*] on a previous procurement and (2) the Contracting Officer determines that such product was previously procured or tested by the [*] and found to comply with specification requirements conforming in every material respect to those in this Invitation for Bids.

*Contracting officer shall insert "procuring activity" or such other designation as may be provided by agency procedures.

(2) Where considered necessary because of the nature of the product, the provision in (f)(1) of this section may be limited to provide for waiving the requirement only if the product offered is produced at the same plant at which the product previously procured or tested was produced.

(g) *Unsolicited samples.* If bid samples are not required by the invitation for bids, but samples are furnished with a bid, they will not be considered as qualifying the bid, and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(h) *Disposition of samples.* Samples, if not destroyed in testing, shall be returned to bidders at their request and expense, unless otherwise specified in the invitation for bids.

§ 1–2.202–5 Descriptive literature.

(a) *Definition.* As used in this § 1–2.202–5, the term "descriptive literature" means information, such as cuts, illustrations, drawings and brochures, which show the characteristics or construction of a product or explain its operation, furnished by a bidder as a part of his bid to describe the products offered in his bid. The term includes only information required to determine acceptability of the product, and excludes other information such as that furnished in connection with the qualifications of a bidder or for use in operating or maintaining equipment.

(b) *Policy.* Bidders shall not be required to furnish descriptive literature as a part of their bids unless the contracting agency deems that such literature is needed to enable it to determine before award whether the products offered meet the specification requirements of the invitation for bids and to establish exactly what the bidder proposes to furnish. It may be appropriate to require descriptive literature in the procurement of highly technical or specialized equipment, or where considerations such as design or style are important in determining acceptability of the product.

(c) *Justification.* The reasons why acceptable products cannot be procured without the submission of descriptive literature shall be set forth and filed in the case file, except where such submission is required by the formal specifications (Federal, military, departmental, etc.) applicable to the procurement.

(d) *Requirements of invitation for bids.* When descriptive literature is required, the invitation for bids shall clearly state what descriptive literature is to be furnished, the purpose for which it is required, the extent to which it will be considered in the evaluation of bids, and the rules which will apply if a bidder fails to furnish it before bid opening or if the literature furnished does not comply with the requirements of the invitation for bids. Where descriptive literature is not considered necessary and a waiver of the literature requirements of a specification has been authorized, a statement shall be included in the invitation for bids that notwithstanding the requirements of the specifications, descriptive literature will not be required.

(1) Except as provided in (d)(2) of this section, if bidders are to furnish descriptive literature as a part of their bids, a provision substantially as follows (modified, if appropriate, in accordance with (e)(1) of this section) shall be included in the invitation for bids:

REQUIREMENT FOR DESCRIPTIVE LITERATURE

(a) Descriptive literature as specified in this Invitation for Bids must be furnished as a part of the bid and must be received before the time set for opening bids. The literature furnished must be identified to show the item in the bid to which it pertains. The descriptive literature is required to establish, for the purposes of bid evaluation and award, details of the products the bidder proposes to furnish as to [*].

(b) Failure of descriptive literature to show that the product offered conforms to the specifications and other requirements of this Invitation for Bids will require rejection of the bid. Failure to furnish the descriptive literature by the time specified in the Invitation for Bids will require rejection of

*Contracting officer shall insert significant elements such as design, materials, components, or performance characteristics, or methods of manufacture, construction, assembly, or operation, as appropriate.

the bid, except that if the material is transmitted by mail and is received late, it may be considered under the provisions for considering late bids, as set forth elsewhere in this Invitation for Bids.

(2) When brand name or equal purchase descriptions are used, the requirements of this § 1–2.202–5 are met by inserting in the invitation for bids the brand names provision set forth in § 1–1.307–6.

(e) *Waiver of requirements for descriptive literature.* (1) The provision prescribed in (d)(1) of this section may be modified to provide that the requirements for furnishing descriptive literature may be waived as to a particular bidder if (i) the bidder states in his bid that the product he is offering to furnish is the same as a product previously or currently being furnished to the procuring activity and (ii) it is determined by the contracting officer that such product complies with the specification requirements of the current invitation for bids. When provision is to be made for such waiver ,the invitation for bids provision in (d)(1) of this section shall be modified by adding substantially the following at the end of paragraph (b) thereof:

However, the requirements for furnishing descriptive literature may be waived as to a bidder if (1) the bidder states in his bid that the product he is offering to furnish is the same as a product he has previously furnished to the [*] under a prior contract and the bidder identifies the contract, and (2) the Contracting Officer determines that such product meets the requirements of this Invitation for Bids.

*Contracting officer shall insert "procuring activity" or such other designation as may be provided by agency procedures.

(2) If the invitation for bids contains a provision for waiver in accordance with (e)(1) of this section, a bidder may submit his bid either on the basis of the descriptive literature to be furnished or on the basis of a previously procured product. If he elects to submit his bid on one basis, he is precluded from having his bid considered on the alternative basis after bids are opened.

(f) *Unsolicited descriptive literature.* If the furnishing of descriptive literature is not required by the invitation for bids, but such literature is furnished with a bid, it will not be considered as qualifying the bid, and will be disregarded, unless it is clear from the bid or accompanying papers that it was the bidder's intention so to qualify the bid.

(g) See § 1–2.404–4 for requirements with respect to restrictions on the public disclosure of descriptive literature submitted by a bidder.

§ 1–2.203 Methods of soliciting bids.

§ 1–2.203–1 Mailing or delivering to prospective bidders.

Invitations for bids or pre-invitation notices (see § 1–2.205–4(c)) shall be mailed (or delivered) to a sufficient number of prospective bidders so as to elicit adequate competition. Invitations for bids may be mailed for informational purposes to Government agencies, including procurement information offices, or to such other organizations as may be authorized by agency procedures.

§ 1–2.203–2 Displaying in public places.

Copies of unclassified invitations for bids shall be displayed at the procuring office and/or at other appropriate public places.

§ 1–2.203–3 Publicity in newspapers and trade journals.

(a) *Free publicity.* A brief announcement of the proposed procurement, or copies of unclassified invitations for bids, may be made available for free publication to newspapers and to trade journals and magazines.

(b) *Paid advertisements.* Paid advertisements in newspapers and trade journals shall be contracted for in accordance with agency procedures pursuant to 5 U.S.C. 22a; 44 U.S.C. 321, 322, and 324; and Title 7, Chapter 5200, General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies.

§ 1–2.203–4 Synopses of invitations for bids.

Synopses of invitations for bids shall be prepared and publicized in the Commerce Business Daily in accordance with § 1–1.1003.

§ 1–2.204 Records of invitations for bids and records of bids.

Each agency shall retain a record of every invitation for bids issued and distributed by it and of each abstract or record of bids. The file of the invitation for bids should show the distribution which was made and the date thereof.

§ 1–2.205 Bidders mailing lists.

§ 1–2.205–1 Establishment of lists.

(a) Bidders mailing lists shall be established by procuring activities to assure access to adequate sources of supply and service except where the requirements of the procuring activity can be obtained within the local trade area through utilization of simplified small purchase procedures (see Subpart 1–3.6) or are nonrecurring.

(b) All eligible concerns which have submitted bidders mailing list applications, or which the procuring activity considers capable of filling the requirements of a particular procurement, shall be placed on the appropriate bidders mailing list. Planned producers under the Industrial Readiness Planning Program shall be included on the bidders mailing list for their planned items.

(c) Bidder's Mailing List Application (Standard Form 129) shall be used for obtaining information needed, as prescribed in § 1–16.802, in the establishment and maintenance of bidders mailing lists.

§ 1–2.205–2 Removal of names from bidders mailing lists.

(a) The name of each concern failing to respond to an invitation for bids, or pre-invitation notice (see § 1–2.205–4(c)), may be removed from the bidders mailing list without notice to the concern but only for the item or items involved in such invitation or notice. Where a concern fails to respond to two consecutive invitations for bids or pre-invitation notices, its name shall be removed from the bidders mailing list to the extent indicated above, except that, in individual cases, concerns thus failing to respond may be retained on a bidders mailing list if such retention is considered to be in the best interests of the Government. Both actual bids and written requests for retention on the bidders mailing lists are "responses" to invitations for bids or pre-invitation notices.

(b) The names of concerns which have been (1) debarred from entering into Government contracts, or (2) otherwise determined to be ineligible to receive an award of a Government contract, shall be removed from the bidders mailing lists to the extent required by such debarment or determination of ineligibility.

§ 1–2.205–3 Reinstatement on bidders mailing lists.

Concerns which have been removed from bidders mailing lists may be reinstated upon request or by filing a new application on Standard Form 129. No concern which is debarred or ineligible shall be reinstated during the period of debarment or while ineligible.

§ 1–2.205–4 Excessively long bidders mailing lists.

(a) *General.* To prevent excessive administrative costs of a procurement, mailing lists should be used in a way which will promote competition commensurate with the dollar value of the purchase to be made. As much of the mailing list will be used as is compatible with efficiency and economy in securing adequate competition as required by law. Where the number of bidders on a mailing list is considered excessive in relation to a specific procurement, the list may be reduced by any method consistent with the foregoing, including those described in paragraphs (b) and (c) of this section. The fact that less than an entire mailing list is used shall not in itself preclude furnishing of bidding sets to others upon request therefor, or consideration of bids received from bidders who were not invited to bid.

(b) *Rotation of lists.* Mailing lists may be rotated, but to do so will require considerable judgment as to whether the size of the transaction justifies the rotation. In rotating a list, the interests of small business (see § 1–1.702(a)(2)) and the existence of labor surplus areas (see § 1–1.802–2(e)) shall be considered.

(c) *Pre-invitation notices.* In lieu of initially forwarding complete bid sets, the procuring activity may send pre-invitation notices to concerns on the mailing list. The notice shall (1) specify the date by which bidders should return the notice in order to receive a complete bid set, (2) describe the requirement so as to furnish a complete item description and a condensation of other essential information to provide concerns with an intelligible basis for judging whether they have an interest in the procurement, and (3) expressly notify concerns that if no bid is to be submitted they should advise the issuing office in writing if future invitations are desired for the type of supplies or services involved. Drawings, plans, and specifications normally will

not be furnished with the pre-invitation notice. The return date of the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets will be sent to concerns which request them. This procedure is particularly suitable to major procuring activities where lengthy invitations for bids and long bidders lists are common.

§ 1–2.205–5 Release of bidders mailing lists.

(a) [Reserved]

(b) When invitations for bids for construction contracts have been issued, trade journals, prospective subcontractors, material suppliers, and others having a bona fide interest in such information, may be supplied, upon request, with a list of all prospective bidders furnished copies of the plans and specifications.

§ 1–2.206 Small business and labor surplus area set-asides.

See Subparts 1–1.7 and 1–1.8.

§ 1–2.207 Amendment of invitations for bids.

(a) If after issuance of invitations for bids but before the time set for opening of bids it becomes necessary to make changes in quantities, specifications, delivery schedules, opening dates, etc., or to correct a defective or ambiguous invitation, such changes shall be accomplished by issuance of an amendment to the invitation for bids. The amendment shall be sent to each concern to whom the invitation for bids has been furnished and shall be displayed in the bid room.

(b) Each amendment issued to an invitation for bid shall:

(1) Be serially numbered, using a separate series of numbers for each invitation for bids concerned.

(2) Include the number of the invitation for bids concerned.

(3) Clearly state the changes made in the invitation for bids and the extension of the opening date, if any. If no extension of the time set for opening is involved, the amendment shall so state.

(4) Include instructions to bidders for acknowledging receipt of the amendment and information concerning the effect of failure to acknowledge or return the amendment.

(c) Before issuing an amendment to an invitation for bids, the period of time remaining until the time set for opening and the need for extending this period by postponing the time set for opening must be considered. Where only a short time remains before the time set for opening, consideration should be given to notifying bidders of an extension of time by telegraph or telephone. Such notification should be confirmed in the amendment.

(d) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders, as an amendment to the invitation, if such information is necessary to bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders. No award shall be made on the invitation unless such amendment has been issued in sufficient time to permit all prospective bidders to consider such information in submitting or modifying their bids.

§ 1–2.208 Cancellation of invitations before opening.

(a) Cancellation of an invitation for bids usually involves the loss of time, effort, and money spent by the Government and bidders in carrying the procurement process up to the point of cancellation. Invitations for bids should not be cancelled unless cancellation is clearly in the public interest, such as where there is no longer a requirement for the material or service or where amendments to the invitation would be of such magnitude that a new invitation is desirable. Where an invitation is cancelled, bids which have been received shall be returned unopened to the bidders and a notice of cancellation shall be sent to all prospective bidders to whom invitations for bids were issued.

(b) The notice of cancellation shall identify the invitation for bids; briefly explain the reason the invitation is being cancelled; and, where appropriate, assure prospective bidders that they will be given an opportunity to bid on any resolicitation of bids or any future requirements for the type of material or services involved. The cancellation shall be recorded in accordance with § 1–2.403.

§ 1–2.209 Qualified products.

See Subpart 1–1.11.

Subpart 1–2.3—Submission of bids

§ 1–2.301 Responsiveness of bids.

(a) To be considered for award, a bid must comply in all material respects with the invitation for bids so that, both as to the method and timeliness of submission and as to the substance of any resulting contract, all bidders may stand on an equal footing and the integrity of the formal advertising system may be maintained.

(b) Telegraphic bids shall not be considered unless permitted by the invitation for bids.

(c) Bids should be filled out, executed, and submitted in accordance with the instructions which are contained in the invitation for bids. If a bidder uses its own bid form or a letter to submit a bid, the bid may be considered only if (1) the bidder accepts all the terms and conditions of the invitation, and (2) award on the bid would result in a binding contract, the terms and conditions of which do not vary from the terms and conditions of the invitation.

§ 1–2.302 Time of bid submission.

Bids shall be submitted so as to be received in the office designated in the invitation for bids not later than the exact time set for opening of bids. Where telegraphic bids are authorized, a telegraphic bid received in such office by telephone from the receiving telegraph office not later than the time set for opening of bids shall be considered if such bid is confirmed by the telegraph company by sending a copy of the telegram which formed the basis for the telephone call.

§ 1–2.303 Late bids.

§ 1–2.303–1 General.

Bids received at the office designated in the invitation for bids after the exact time set for opening of bids are late bids. Late bids shall not be considered for award except as authorized in this §1–2.303.

§ 1–2.303–2 Consideration for award.

A late bid shall be considered for award only if:

(a) It is received before award; and either

(b) It was sent by registered mail or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, or by telegraph if authorized, and it is determined that the lateness was due solely to a delay in the mails (based on evidence pursuant to § 1–2.303–3), or to a delay by the telegraph company, for which the bidder was not responsible; or

(c) If submitted by mail (or by telegram where authorized), it was received at the Government installation in sufficient time to be received at the office designated in the invitation by the time set for opening and, except for delay due to mishandling on the part of the Government at the installation, would have been received on time at the office designated. The only evidence acceptable to establish timely receipt at the Government installation is that which can be established upon examination of an appropriate date or time stamp (if any) of such installation, or of other documentary evidence of receipt at such installation (if readily available) within the control of such installation or of the post office serving it.

§ 1–2.303–3 Mailed bids.

(a) *Registered mail.* The time of mailing of a late bid mailed by registered mail may be determined by the date in the postmark on the registered mail receipt or registered mail wrapper. The time of mailing shall be deemed to be the last minute of the date shown in such postmark unless the bidder furnishes evidence from the post office station of mailing which established an earlier time. Such evidence, if appropriately verified in writing by the post office station of mailing, may consist of an entry in ink on the registered mail receipt showing the time of mailing and the initials of the postal employee receiving the item and making the entry. If the postmark does not show a date, the bid shall be deemed to have been mailed too late unless the bidder furnishes evidence from the post office station of mailing which establishes timely mailing.

(b) *Certified mail.* The time of mailing of a late bid, mailed by certified mail for which a postmarked Receipt for Certified Mail was obtained shall be deemed to be the last minute of the date shown in the postmark on such receipt, except where (i) the Receipt for Certified Mail identifies the post office station of mailing and the bidder furnishes evidence

from such station that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or (ii) an entry in ink on the Receipt for Certified Mail, showing the time of mailing and the initials of the postal employee receiving the item and making the entry, is appropriately verified in writing by the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark does not show a date, the bid shall be deemed to have been mailed too late.

(c) *Delivery time.* Information concerning the normal time for mail delivery shall be obtained by the procuring activity from the postmaster, superintendent of mails, or a duly authorized representative for that purpose, of the post office serving that activity. When time permits, such information shall be obtained in writing.

§ 1–2.303–4 Telegraphic bids.

A late telegraphic bid shall be presumed to have been filed with the telegraph company too late to be received in time, except where the bidder demonstrates by clear and convincing evidence, which includes substantiation by an authorized official of the telegraph company, that the bid, as received at the office designated in the invitation for bids, was filed with the telegraph company in sufficient time to have been delivered by normal transmission procedure so as not to have been late (see § 1–2.302).

§ 1–2.303–5 Hand-carried bids.

A late hand-carried bid, or any other late bid not submitted by mail or telegram, shall not be considered for award.

§ 1–2.303–6 Notification to late bidders.

Where a late bid is received and it is clear from available information that under § 1–2.303–2 such late bid cannot be considered, the contracting officer or his authorized representative shall promptly notify the bidder that his bid was received late and will not be considered (see also § 1–2.303–7). However, where a late bid is transmitted by registered mail and received before award but it is not clear from available information whether the bid can be considered, or in any case of a late bid transmitted by certified mail received before award, the bidder shall be promptly notified substantially as follows:

Your bid in response to Invitation for Bids No. ------, dated ----------, was received after the time for opening specified in the Invitation. Accordingly, your bid will not be considered for award unless (1) there is received from you by ----------, clear and con-
(Date)
vincing evidence from the post office station of mailing which establishes the date (and time, if possible) that the bid was deposited with that station, and (2) it is determined by the Government that late receipt was due solely to a delay in the mail for which you are not responsible. In the case of certified mail, the original postmarked Receipt for Certified Mail must be furnished and is the only evidence acceptable under (1) above, except that, where the Receipt for Certified Mail identifies the post office station of mailing, evidence from such station of its closing time or written verification by such station of an approved time entry on the receipt are also acceptable.

The foregoing notification shall be appropriately modified in the case of late telegraphic bids.

§ 1–2.303–7 Disposition of late bids.

A late bid which is not for consideration shall be held unopened until after award and then returned to the bidder (unless other disposition is requested or agreed to by the bidder). However, an unidentified late bid may be opened solely for purposes of identification as provided in § 1–2.401.

§ 1–2.303–8 Records.

The following shall, if available, be included in the contracting office files with respect to each late bid:

(a) A statement of the date and hour of mailing or filing.

(b) A statement of the date and hour of receipt.

(c) The determination of whether or not the late bid was considered for award, with supporting facts.

(d) A statement of the disposition of the late bid.

(e) The envelope, or other covering, if the late bid was considered for award.

§ 1–2.304 Modification or withdrawal of bids.

(a) Bids may be modified or withdrawn by written or telegraphic notice received in the office designated in the invitation for bids not later than the exact time set for opening of bids. A telegraphic modification or withdrawal of a bid received in such office by telephone from the receiving telegraph office not later than the time set for opening of bids shall be considered if such message is confirmed by the telegraph company by sending a copy of the written telegram which formed the basis for the telephone call. Modifications received by telegram (including a record of those telephoned by the telegraph company) shall be sealed in an envelope by a proper official who shall write thereon the date and time of receipt and by whom, the invitation for bid number, and his signature. No information contained therein shall be disclosed before the time set for bid opening. See § 1–2.401 with respect to the receipt and safeguarding of modifications.

(b) A bid may be withdrawn in person by a bidder or his authorized representative, provided his identity is made known and he signs a receipt for the bid, but only if the withdrawal is prior to the exact time set for opening of bids.

§ 1–2.305 Late modifications and withdrawals.

Modifications of bids and requests for withdrawal of bids which are received in the office designated in the invitation for bids after the exact time set for opening are "late modifications" and "late withdrawals," respectively. A late modification or late withdrawal shall be subject to the rules and procedures applicable to late bids set forth in § 1–2.303. However, a late modification of the otherwise successful bid shall be opened at any time it is received; and if in the judgment of the contracting officer it makes the terms of the bid more favorable to the Government, it shall be considered. In the case of late modifications and late withdrawals, the notice set forth in § 1–2.303–6 shall be appropriately modified.

Subpart 1–2.4—Opening of Bids and Award of Contract

§ 1–2.401 Receipt and safeguarding of bids.

(a) All bids (including modifications) received prior to the time set for opening shall be kept unopened, except as stated in § 1–2.401(b), and secure in a locked bid box or other locked receptacle. Prior to bid opening, information concerning the identity and number of bids received shall be made available only to Government employees who have a proper need for such information. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

(b) Unidentified bids may be opened solely for the purpose of identification and then only by an authorized official. If a sealed bid is opened by mistake, the person who opens the bid will immediately write his signature and position title on the envelope and deliver it to the proper official. This official shall immediately write on the envelope an explanation of the opening, the date and time opened, the invitation for bid number, and his signature. Bids opened by mistake or for identification purposes shall be resealed in the envelope and no information contained therein shall be disclosed prior to the public bid opening.

§ 1–2.402 Opening of bids.

(a) The official designated as the bid opening officer shall decide when the time set for bid opening has arrived and shall so declare to those present. All bids received prior to the time set for opening shall then be publicly opened and, when practicable, read aloud to the persons present, and be recorded. If it is impracticable to read the entire bid, as where many items are involved, the total amount bid shall be read, if feasible. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids required by § 1–2.403 has been made and its accuracy verified.

(b) Performance of the procedure in § 1–2.402(a) may be delegated to an assistant, but the bid opening officer remains fully responsible for the actions of such assistant.

(c) Examination of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of Government business. However, original bids shall not be allowed to pass out of the hands of a Government official unless duplicate copies of such bids are not available for public inspection. In such cases, the original bids may be examined by the public only under the immediate supervision of a Government official and under conditions which preclude possibility of a substitution, addition, deletion, or alteration in the bids. However, see § 1–2.404–4 with respect to public disclosure of descriptive literature submitted by a bidder on a restrictive basis.

§ 1–2.403 Recording of bids.

The invitation number, bid opening date, general description of the procurement item, names of bidders, prices bid, and any other information required for bid evaluation, shall be entered in an abstract or record which, except in the case of a classified procurement, shall be available for public inspection. When the items are too numerous to warrant the recording of all bids completely, an entry shall be made of the invitation number, opening date, general description of the procurement items, and the total price bid where definite quantities are involved. The record or abstract shall be completed as soon as practicable after the bids have been opened and read. The bid opening officer shall certify the accuracy of the record or abstract. If the invitation for bids is canceled before the time set for bid opening, this fact shall be recorded, together with a statement of the number of concerns invited to bid and the number of bids received.

§ 1–2.404 Rejection of bids.

§ 1–2.404–1 Cancellation of invitation after opening.

(a) Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation. Every effort shall be made to anticipate changes in a requirement prior to the date of opening and to notify all prospective bidders of any resulting modification or cancellation, thereby permitting bidders to change their bids and preventing unnecessary exposure of bid prices. As a general rule, after opening, an invitation for bids should not be cancelled and readvertised due solely to increased requirements for the items being procured. Award should be made on the initial invitation for bids and the additional quantity should be treated as a new procurement.

(b) Invitations for bids may be cancelled after opening but prior to award, and all bids rejected, where such action is consistent with § 1–2.404–1(a) and the contracting officer determines in writing that cancellation is in the best interest of the Government for reasons such as the following:

(1) Inadequate, ambiguous, or otherwise deficient specifications were cited in the invitation for bids.

(2) The supplies or services are no longer required.

(3) The invitation for bids did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants.

(4) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that on which the bids were invited.

(5) All otherwise acceptable bids received are at unreasonable prices. (See § 1–3.214 concerning authority to negotiate in such situations.)

(6) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith. (See § 1–3.214 concerning authority to negotiate in such situations and Subpart 1–1.9 for reports to be made to the Department of Justice.)

(7) The bids received did not provide competition which was adequate to insure reasonable prices.

(c) Should administrative difficulties be encountered after bid opening which may delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend the bid acceptance period (with consent of sureties, if any) in order to avoid the need for readvertisement.

§ 1–2.404–2 Rejection of individual bids.

(a) Any bid which fails to conform to the essential requirements of the invitation for bids, such as specifications, delivery schedule, or permissible alternates thereto, shall be rejected as nonresponsive.

(b) Ordinarily, a bid shall be rejected where the bidder imposes conditions which would modify requirements of the invitation for bids or limit his liability to the Government so as to give him an advantage over other bidders. For example, bids shall be rejected in which the bidder:

(1) Attempts to protect himself against future changes in conditions such as increased costs, if total price to the Government cannot be determined for bid evaluation.

(2) Fails to state a price and, in lieu thereof, states that price shall be "price in effect at time of delivery."

(3) States a price but qualifies such price as being subject to "price in effect at time of delivery."

(4) Where not authorized by the invitation, conditions or qualifies his bid by stipulating that the bid is to be considered only if, prior to date of award, bidder receives (or does not receive) award under a separate procurement.

(5) Limits rights of Government under any contract clause. However, a low bidder may be requested to delete objectionable conditions from his bid if these conditions do not go to the substance, as distinguished from the form of the bid. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

(c) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price.

(d) Bids received from any person or concern debarred or ineligible shall be rejected if the period of debarment or ineligibility has not expired (see Subpart 1–1.6).

(e) Low bids received from concerns determined to be not responsible, pursuant to § 1–1.310, shall be rejected (but, if bidder is a small business concern, see Subpart 1–1.7 with respect to certificates of competency).

(f) Where a bid guarantee is required and a bidder fails to furnish it in accordance with the requirements of the invitation for bids, the bid shall be rejected except as otherwise provided in § 1–10.102–5.

(g) The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the procurement.

§ 1–2.404–3 Notice to bidders of rejection of all bids.

When it is determined to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected, stating the reason for such action.

§ 1–2.404–4 Restrictions on disclosure of descriptive literature.

(a) When a bid is accompanied by descriptive literature (as defined in § 1–2.202–5(a)), and the bidder imposes a restriction that such literature may not be publicly disclosed, such restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid which relate to quantity, price and delivery terms. The provisions of this paragraph (a) do not apply to unsolicited descriptive literature submitted by a bidder if such literature does not qualify the bid (see § 1–2.202–5 (f)).

(b) Descriptive literature restricted by a bidder against public disclosure shall not be disclosed in a manner which would contravene the restriction without permission of the bidder.

§ 1–2.404–5 All or none qualifications.

Unless the invitation for bids so provides a bid is not rendered nonresponsive by the fact that the bidder specifies that award will be accepted only on all, or a specified group, of the items included in the invitation for bids. However, bidders shall not be permitted to withdraw or modify "all or none" qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

§ 1–2.405 Minor informalities or irregularities in bids.

A minor informality or irregularity is one which is merely a matter of form and not of substance or pertains to some immaterial or inconsequential defect or variation of a bid from the exact requirement of the invitation for bids, the correction or waiver of which would not be prejudicial to other bidders. The defect or variation in the bid is immaterial and inconsequential when its significance as to price, quantity, quality, or delivery is trivial or negligible when contrasted with the total cost or scope of the supplies or services being procured. The contracting officer shall either give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive such deficiency, whichever is to the advantage of the Government. Examples of minor informalities or irregularities include:

(a) Failure of bidder to return the number of copies of signed bids required by the invitation for bids.

(b) Failure to furnish required information concerning the number of bidders' employees.

(c) Failure of bidder to sign its bid, but only if (1) the unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid document, such as the submission of a bid guarantee, or a letter signed by the bidder with the bid referring to and clearly identifying the bid itself; or (2) the firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature.

(d) Failure of a bidder to acknowledge receipt of an amendment to an invitation for bids, but only if:

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation for bids and the bidder submitted a bid thereon; or

(2) The amendment involves only a matter of form or is one which has either no effect or merely a trivial or negligible effect on price, quantity, quality, or delivery of the item bid upon.

§ 1–2.406 Mistakes in bids.

§ 1–2.406–1 General.

After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, he shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this § 1–2.406. Such actions shall be taken prior to award.

§ 1–2.406–2 Apparent clerical mistakes.

Any clerical mistake, apparent on the face of a bid, may be corrected by the contracting officer prior to award, if the contracting officer has first obtained from the bidder verification of the bid actually intended. Examples of such apparent mistakes are: obvious misplacement of a decimal point; obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days); obvious reversal of the price f.o.b. destination and the price f.o.b. origin; and obvious mistake in designation of unit. Correction shall be reflected in the award document.

§ 1–2.406–3 Other mistakes disclosed before award.

(a) Heads of executive agencies are authorized, in order to minimize delay in contract awards, to make the administrative determinations described below in connection with mistakes in bids alleged after opening of bids and before award. The authority contained herein to permit correction of bids is limited to bids which, as submitted, are responsive to the invitation for bids, and may not be used to permit correction of bids to make them responsive. This authority is in addition to that in § 1–2.406–2 or that which may be otherwise available.

(1) A determination may be made permitting the bidder to withdraw his bid where the bidder requests permission to do so and clear and convincing evidence establishes the existence of a mistake. However, if the evidence is clear and convincing both as to the existence of a mistake and as to the bid actually intended, and if the bid, both as uncorrected and corrected, is the lowest received, a determination may be made to correct the bid and not permit its withdrawal.

(2) A determination may be made permitting the bidder to correct his bid where the bidder requests permission to do so and clear and convincing evidence establishes both the existence of a mistake and the bid actually intended. However, if such correction would result in displacing one or more lower acceptable bids, the determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and bid itself. If the evidence is clear and convincing only as to the mistake, but not as to the intended bid, a determination permitting the bidder to withdraw his bid may be made.

(3) If the evidence does not warrant a determination under subparagraph (1) or (2) of this paragraph, a determination may be made that a bidder may neither withdraw nor correct his bid.

(b) Heads of executive agencies may delegate to a central authority in their agencies, without power of redelegation, authority to make the determinations under this § 1–2.406–3.

(c) Each proposed determination shall be approved by the agency's General Counsel, Associate General Counsel, an Assistant General Counsel, or other comparable legal officer.

(d) Suspected or alleged mistakes shall be processed as follows:

(1) Whenever the contracting officer suspects that a mistake may have been made in a bid, he shall immediately request the bidder to verify the bid. Such request shall inform the bidder why the request for verification is made—that a mistake is suspected and the basis for such suspicion; e.g., that the bid is significantly out of line with the next low or other bids or with the Government's estimate. If the time for acceptance of bids is likely to expire before a decision can be made, the contracting officer shall request all bidders whose bids may become eligible for award to extend the time for acceptance of their bids. If the bidder whose bid is believed erroneous does not grant such extension of time and a decision cannot be reached before expiration of the time for acceptance, even if handled by telegraph or telephone as provided in subparagraph (4) of this paragraph, the bid shall be considered as originally submitted.

(2) If the bidder verifies his bid, the contracting officer shall consider it as originally submitted. If the bidder alleges a mistake, the contracting officer shall advise him to support his allegation by statements concerning the alleged mistake and by all pertinent evidence, such as the bidder's file copy of the bid, his original worksheets and other data used in preparing the bid, subcontractors' and suppliers' quotations, if any, published price lists, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended.

(3) Where the bidder furnishes evidence in support of an alleged mistake, the case shall be referred to the appropriate authority together with the following data:

(i) All evidence furnished by the bidder.

(ii) A copy of the bid, of the invitation for bids, and any specifications or drawings relevant to the alleged mistake.

(iii) An abstract or record of the bids received.

(iv) A written statement by the contracting officer setting forth—

(A) The expiration date of the bid in question and of the other bids submitted;

(B) Specific information as to how and when the mistake was alleged;

(C) A summary of the evidence submitted by the bidder;

(D) In the event only one bid was received, a quotation of a recent contract price for the supplies or services involved, or, in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services and the basis for such estimate;

(E) Any additional evidence considered pertinent including copies of all correspondence between the contracting officer and the bidder concerning the alleged mistake; and

(F) The course of action with respect to the bid that the contracting officer considers proper on the basis of the evidence.

(4) When time is of the essence, because of the expiration of bids or otherwise, the contracting officer may refer the case by telegraph or telephone to the designated authority. Ordinarily, however, contracting officers will not refer mistake in bid cases to the designated authority by telegraph or telephone, particularly when the determinations set forth in (a) (2) and (3) of this section are applicable, since actual examination of the evidence is generally necessary to determine the proper action to be taken.

(5) Where the bidder fails or refuses to furnish evidence in support of a suspected or alleged mistake, the contracting officer shall consider the bid as submitted unless the amount of the bid is so far out of line with the amounts of other bids received or with the amount estimated by the agency or determined by the contracting officer to be reasonable, or there are other indications of error so clear, as reasonably to justify the conclusion that acceptance of the bid would be unfair to the bidder or to other bona fide bidders, in which case it may be rejected. The attempts made to obtain the information required and the action taken with respect to the bid shall be fully documented.

(e) Nothing contained in this § 1-2.406-3 shall deprive the Comptroller General of his statutory right to question the correctness of any administrative determination made hereunder nor deprive any bidder of his right to have the matter determined by the Comptroller General should he so request. All doubtful cases shall be submitted to the Comptroller General for advance decision in accordance with agency procedures.

(f) Each agency shall maintain records of all administrative determinations made in accordance with this § 1-2.406-3, the facts involved, and the action taken in each case. Copies of all such administrative determinations shall be included in the case file. Where a contract is awarded, the General Accounting Office copy of the contract, wherever filed, shall be accompanied by a signed copy of any related determination.

§ 1-2.406-4 Disclosure of mistakes after award.

(a) When a mistake in a contractor's bid is not discovered until after the award, the mistake may be corrected by contract amendment or suppelmental agreement if correcting the mistake would make the contract more favorable to the Government without changing the essential requirements of the contract.

(b) In addition to the cases contemplated in (a) of this § 1-2.406-4, heads of executive agencies are authorized, under the circumstances set forth in (c) of this § 1-2.406-4, to make the administrative determinations described below in connection with mistakes in bids alleged or disclosed after award. This authority is in addition to that provided by Public Law 85-804 (50 U.S.C. 1431-1435) (see Part 1-17), or that which may be otherwise available.

(1) A determination may be made to rescind a contract where the original contract prices does not exceed $1,000.

(2) A determination may be made to reform a contract, irrespective of amount, (i) to delete the item or items involved in the mistake where such deletion does not reduce the contract price by more than $1,000, or (ii) to increase the price where such increase does not exceed $1,000 and if the contract price, as corrected, does not exceed that of the next lowest acceptable bid under the original invitation for bids.

(c) Determinations under (b) of this § 1-2.406-4 may be made only on the basis of clear and convincing evidence that a mistake in bid was made, and either that the mistake was mutual or that the unilateral mistake made by the contractor was so apparent as to have charged the contracting officer with notice of the probability of the mistake. If the evidence does not warrant a determination under (b)(1) or (b)(2) of this section, a determination may be made that no change shall be made in the contract as awarded.

(d) Heads of executive agencies may delegate to one central authority only in their agencies, without power of redelegation, authority to make the determinations under this § 1-2.406-4.

(e) Each proposed determination shall be approved by the agency's General Counsel, Associate General Counsel, an Assistant General Counsel, or other comparable legal officer.

(f) Mistakes disclosed after award shall be processed as follows:

(1) Whenever a mistake in bid is alleged or disclosed after award, the contracting officer shall advise the contractor to support the alleged error by written statements and by all pertinent evidence, such as the contractor's file copy of the bid, his original worksheets and other data used in preparing the bid, subcontractors' and suppliers' quotations (if any), published price lists, and any other evidence which will serve to establish the mistake, the manner in which it occurred, and the bid actually intended.

(2) Where the contractor furnishes evidence in support of an alleged mistake, the case shall be referred to the appropriate authority together with the following data:

(i) All evidence furnished by the contractor.

(ii) A copy of the contract, including a copy of the bid and any specifications or drawings relevant to the alleged mistake, and any change orders or supplemental agreements thereto.

(iii) An abstract or record of the bids received.

(iv) A written statement by the contracting officer setting forth—

(A) Specific information as to how and when the mistake was alleged or disclosed;

(B) A summary of the evidence submitted by the contractor;

(C) His opinion whether a bona fide mistake was made in the bid and whether he was, or should have been, on constructive notice of the mistake before the award, together with the reasons or data upon which his opinion is based;

(D) In the event only one bid was received, a quotation of a recent contract price for the supplies or services involved or, in the absence of a recent comparable contract, the contracting officer's estimate of a fair price for the supplies or services, and the basis for such estimate;

(E) Any additional evidence considered pertinent, including copies of all relevant correspondence between the contracting officer and the contractor concerning the alleged mistake;

(F) The course of action with respect to the alleged mistake that the contracting officer considers proper on the basis of the evidence, and, if other than a change in contract price is recommended, the manner by which the item will otherwise be procured; and

(G) The status of performance and payments under the contract, including contemplated performance and payments.

(g) Nothing contained in this § 1-2.406-4 shall deprive the Comptroller General of his statutory right to question the correctness of any administrative determination made hereunder nor deprive any contractor of his right to have the matter determined by the Comptroller General should he so request.

(h) Each agency shall maintain records of all administrative determinations made in accordance with this § 1-2.406-4, the facts involved, and the action taken in each case. A copy of the determination shall be attached to each copy of any contract rescission or reformation resulting therefrom.

(i) Where administrative determination is precluded by the limitations set forth in this section, the matter will be submitted to the Comptroller General for decision in accordance with agency procedures.

(j) Nothing contained in this § 1-2.406-4 prevents an agency from submitting doubtful cases to the Comptroller General.

§ 1–2.407 Award.

§ 1–2.407–1 General.

Unless all bids are rejected, award shall be made by the contracting officer by written notice, within the time for acceptance specified in the bid or extension thereof, to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the Government, price and other factors considered. (For discussion of other factors to be considered, see § 1–2.407–5.) Award shall not be made until all required approvals have been obtained. Awards shall be made by mailing or otherwise furnishing to the successful bidder a properly executed award document or notice of award. When an advance notice of award is issued, it shall be followed as soon as possible by the formal award. When more than one award results from any single invitation for bids, separate award documents shall be executed, each suitably numbered. When an award is made to a bidder for less than all the items which may be awarded to that bidder and additional items are being withheld for subsequent award, the first award to that bidder shall state that the Government may make subsequent awards on such additional items within the bidder's bid acceptance period. All provisions of the invitation for bids, including any acceptable additions or changes made by a bidder in the bid, shall be clearly and accurately set forth (either expressly or by reference) in the award document, since the award is an acceptance of the bid, and the bid and the award constitute the contract.

§ 1–2.407–2 Responsible bidder.

Before awarding the contract, the contracting officer shall determine that a prospective contractor is responsible (see § 1–1.310).

§ 1–2.407–3 Discounts.

(a) Prior to issuing an invitation for bids (except one for construction), a determination shall be made as to what minimum period for prompt payment discounts will be considered in the evaluation of bids and such minimum period shall be stated in the invitation for bids. In determining the minimum period for a particular procurement, consideration shall be given to:

(1) The place of delivery, inspection, and acceptance in relation to the place of payment of invoices or vouchers.

(2) The number of days required to process invoices or vouchers from receipt through payment in the normal course of business.

(3) The need for prolonged acceptance testing or other unusual circumstances tending to retard the normal processing of invoices or vouchers.

Generally, the minimum period will be expressed in multiples of ten days; e.g., "ten calendar days," "twenty calendar days," or "thirty calendar days," since these time intervals coincide with the discount terms generally offered by industry.

(b) In determining which of several bids received is the lowest, any discount offered shall be deducted from the bid price on the assumption that the discount will be taken, unless the discount offered is for a lesser period than the minimum number of days specified in the invitation for bids. (See § 1–2.407–3 (a).) In evaluating equal bids offering discounts meeting the minimum discount period required by the invitation, a bid offering a longer discount period shall not be considered as being more advantageous to the Government. If a bid offers a prompt payment discount, but fails to specify the period in which the discount may be taken, the discount may be considered since award to the bidder gives the Government the right to deduct the discount from any payment made with reasonable promptness.

(c) If a bid offers a prompt payment discount for a period less than that specified in the invitation for bids, the discount shall not be considered in the evaluation of bids. If a bid would have been the lowest bid received if the discount offered were considered, but award is not made thereon because the offered discount cannot be considered, a notation to that effect shall be made upon the abstract or record of bids and on Standard Form 1036 (Statement and Certificate of Award) if used (see § 1–2.407–7).

(d) In any case, the offered discount of the successful bidder shall form a part of the award, whether or not such discount was considered in the evaluation of its bid, and such discount shall be taken if payment is made within the discount period.

§ 1–2.407–4 Price escalation.

(a) Where an invitation for bids does not contain a price escalation clause, bids received which quote a price and contain a price escalation provision, with a ceiling (ususally expressed in terms of a maximum percentage increase) above which the price will not escalate, will be evaluated on the maximum possible escalation of the quoted base price. Bids which contain escalation with no ceiling shall be rejected unless a clear basis for evaluation exists.

(b) Where an invitation for bids contains a price escalation clause and no bidder takes exception to the escalation provisions, bids shall be evaluated on the basis of the quoted prices without the allowable escalation being added. Where a bidder increases the maximum percentage of escalation stipulated in the invitation for bids or limits the downward escalation provisions of the invitation, the bid will be rejected as nonresponsive. Where a bidder deletes the escalation clause from its bid, the bid will be rejected as nonresponsive since the downward escalation provisions are thereby limited. Where a bidder decreases the maximum percentage of escalation stipulated in the invitation for bids, the bid shall be evaluated at the base price on an equal basis with bids that do not reduce the stipulated ceiling. However, if after evaluation, the bidder offering the lower ceiling is in a position to receive the award, the award shall reflect the lower ceiling.

§ 1–2.407–5 Other factors to be considered.

The factors set forth in paragraphs (a) through (f), of this section, among others, may be for consideration in evaluating bids for award.

(a) Foreseeable costs or delays to the Government resulting from differences in inspection, location of supplies, transportation, etc.

(b) Changes made or requested by the bidder in any of the provisions of the invitation for bids to the extent that any such change does not constitute ground for rejection of the bid under the provisions of § 1–2.404.

(c) Advantages or disadvantages to the Government that might result from making more than one award.

(d) Qualified products (see Subpart 1–1.11).

(e) Local, State, and Federal taxes (see Part 1–11).

(f) Origin of supplies, whether domestic or foreign, and, if foreign, the application of the Buy American Act or any other prohibition on foreign purchases (see Part 1–6).

§ 1–2.407–6 Equal low bids.

(a) In furtherance of the small business and labor surplus area policies set forth in Subparts 1–1.7 and 1–1.8, award shall be made in accordance with the following order of priority when two or more low bids are equal in all respects (taking into consideration cost of transportation, cash discounts, and any other factors properly to be considered):

(1) Persistent labor surplus area concerns (as defined in § 1–1.801–1(a)) that are also small business concerns (as defined in Subpart 1–1.7).

(2) Other persistent labor surplus area concerns.

(3) Substantial labor surplus area concerns (as defined in § 1–1.801–1(b)) that are also small business concerns.

(4) Other substantial labor surplus area concerns.

(5) Other small business concerns.

(6) Other concerns.

(b) If the application of (a) of this § 1–2.407–6 results in two or more bidders being eligible for award and such bidders are not small business concerns, the award shall be made to the bidder who will make the most extensive use of small business subcontractors. If two or more bidders still remain equally eligible for award, award shall be made by a drawing by lot limited to such bidders. If time permits, the bidders invoved shall be given an opportunity to be present at the drawing by lot. Such drawing shall be witnessed by at least three persons, and the contract file shall contain the names and addresses of those witnesses.

(c) In each award where preference is to be given under this section, the contracting officer shall, prior to award, obtain from such concern a written statement that it will perform, or cause to be performed, the contract in accordance with the circumstances justifying the priority.

§ 1–2.407–7 Statement and certificate of award.

(a) In connection with each contract made by formal advertising, the contracting officer shall include in the con-

tract file evidence of compliance with § 1–2.103. Where required by agency procedures pursuant to General Accounting Office regulations, Standard Form 1036 (Statement and Certificate of Award) shall be used for this purpose. Where the preparation of Standard Form 1036 is not required, information of a similar nature (hereinafter referred to as the certificate) shall be filed with the General Accounting Office copy of the contract.

(b) The certificate shall either state that the accepted bid was the lowest bid received, or list all lower bids and set forth reasons for their rejection. These reasons shall be set forth in such detail as is necessary to justify the award. For the purpose of this certificate, the lowest bid received is considered to be that bid which is lowest after a consideration of price factors only. The cost of transportation to the destination indicated in the invitation for bids, any acceptable discount offered by a bidder, and if the invitation so specifies any other Government cost factor, shall be considered price factors in determining the lowest bidder for purposes of this certificate. In each case where an award is made after receipt of equal low bids, the certificate shall set forth the manner in which the tie was broken. Where an award involves a mistake in bid and the matter has been resolved by administrative action, a copy of the bidder's verification in the case of an apparent mistake, or the written administrative determination concerned, shall be attached to the certificate. Where an award involves a mistake in bid on which the Comptroller General has rendered a decision, the certificate shall contain a citation by number and date of the decision and a copy thereof shall be attached to the certificate.

§ 1–2.407–8 Protests against award.

(a) *General.* Contracting officers shall consider all protests or objections to the award of a contract, whether submitted before or after award. If the protest is oral and the matter cannot otherwise be resolved, written confirmation of the protest shall be requested. The protester shall be notified in writing of the final decision on the written protest.

(b) *Protests before award.* If award has not been made, the contracting officer may require that written confirmation of an oral protest be submitted by a specified time and inform the protester that award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded and award may be made in the normal manner unless the contracting officer, upon investigation, finds that remedial action is required, in which event such action shall be taken.

(1) In appropriate cases, notice of a protest will be given to bidders affected thereby. For example, when a protest against the making of an award is received and the contracting officer determines to withhold the award pending disposition of the protest, each bidder to whom award is proposed and each bidder whose bid might become eligible for award should be informed of the protest and requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance (with consent of sureties, if any) in order to avoid the need for readvertisement. In the event of failure to obtain such extension of bids, then consideration should be given to proceeding with award under (b)(3) of this section.

(2) Where a protest has been lodged with the procuring agency, the views of the Office of the Comptroller General regarding the protest should be obtained before award whenever such action is considered to be desirable. Where it is known that a protest against the making of an award has been lodged directly with the Comptroller General, a determination to make award under (b)(3) of this section must be approved at an appropriate level above that of the contracting officer, in accordance with agency procedures. While award need not be withheld pending final disposition by the Comptroller General of a protest, a notice of intent to make award in such circumstances shall be furnished the Comptroller General, and formal or informal advice should be obtained concerning the current status of the case prior to making the award.

(3) Where a written protest against the making of an award is received, award shall not be made until the matter is resolved, unless the contracting officer determines that:

(i) The items to be procured are urgently required; or

(ii) Delivery or performance will be unduly delayed by failure to make award promptly; or

(iii) A prompt award will otherwise be advantageous to the Government.

If award is made under (i), (ii) or (iii) above, the contracting officer shall document the file to explain the need for an immediate award, and shall give written notice of the decision to proceed with the award to the protester and, as appropriate, to others concerned.

(c) *Protests after award.* A protest received after award shall be handled in accordance with agency procedures.

§ 1–2.408 Information to bidders.

Where feasible, procuring activities should (a) notify unsuccessful bidders promptly of the fact that their bids were not accepted, and (b) extend the appreciation of the procuring activity for the interest the unsuccessful bidder has shown in submitting a bid. Notification to unsuccessful bidders may be accomplished either orally or in writing through the use of a form postal card or other appropriate means. Should additional information be requested, the procuring activity shall either provide the unsuccessful bidders with the name and address of the successful bidder, together with the contract price, or when workload does not permit, inform the inquirers as to the location where a copy of the abstract of bids is available for inspection. In addition, when an inquiry is made by an unsuccessful bidder whose price bid was lower than the successful bidder, sufficient information shall be furnished in the reply to the unsuccessful bidder to fully explain the basis for award. If a request is received from an inquirer who is not a bidder or a representative of a bidder, the procuring activity may furnish the name of the successful bidder(s) and, if requested, the price(s) at which award(s) were made. However, where such requests require so large an amount of work as to interfere with the normal operations of the procuring activity, the inquirer will be advised where a copy of the abstract of bids may be seen.

§ 1–2.409 Synopses of contract awards.

See § 1–1.1004.

Subpart 1–2.5—Two-Step Formal Advertising

§ 1–2.501 General.

(a) Two-step formal advertising is a method of procurement designed to promote the maximum competition practicable when available specifications are not sufficiently definite to permit a formally advertised procurement in accordance with Subparts 1–2.2, 1–2.3, and 1–2.4. It is a flexible procedure and is especially useful, in procurement of complex and technical items, to prevent the elimination of potentially qualified producers from the competitive base.

(b) Two-step formal advertising is conducted in two phases. The first step consists of the request for, and the submission, evaluation, and, if necessary, discussion of a technical proposal, without pricing, to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and, among other things, includes engineering approach, special manufacturing processes, and special testing techniques. Also, when required to clarify basic technical requirements, other related requirements such as management approach, manufacturing plan, or facilities to be utilized may be clarified in this step. The second step consists of a formally advertised procurement, confined to those offerors who submitted an acceptable technical proposal in Step One.

(c) This method of procurement requires that the contracting officer work closely with technical personnel and rely on their specialized knowledge in determining the technical requirements of the procurement and the criteria to be used in evaluating technical proposals, and in making such evaluation. An objective of the two-step procedure is to permit the development of a sufficiently descriptive statement of the Government's requirements, including the development of a technical data package, so that subsequent procurements may be made by conventional formal advertising.

§ 1–2.502 Conditions for use.

The two-step formal advertising method of procurement may be used when its use has been approved at a level higher than the contracting officer and when all of the following conditions are present:

(a) Available specifications or purchase descriptions are not sufficiently definite or complete to permit full and free competition without engineering evaluation and necessary discussion of the technical aspects of the requirement to insure mutual understanding between each source and the Government.

(b) Definite criteria exist for evaluating technical proposals, such as applicable design, manufacturing, testing, and performance requirements, and special requirements for operational suitability and ease of maintenance; however, such criteria shall not include consideration of capacity or credit as defined in § 1–1.708 of this chapter.

(c) More than one technically qualified source is expected to be available both initially and after technical evaluation.

(d) A firm fixed-price contract or a fixed-price contract with escalation (see § 1–2.201(a)(21)) will be used.

§ 1–2.503 Procedures.

§ 1–2.503–1 Step One.

(a) *Requests for technical proposals.* A request for technical proposals shall be distributed to qualified sources in accordance with § 1–1.302–1 of this chapter. In addition, the request shall be synopsized in accordance with Subpart 1–1.10 and publicly posted in accordance with § 1–2.203–2. The request may be in the form of a letter and shall contain, as a minimum, the following information:

(1) The best practicable description of the supplies or services required.

(2) Notification of the intent to conduct the procurement in two steps and the actions involved.

(3) The requirements of the technical proposal, i.e., the necessary details such as drawings, data, presentation, etc., to be submitted.

(4) The criteria for evaluating the technical proposal (§ 1–2.502(b)).

(5) A statement that the technical proposals shall not include prices or pricing information.

(6) The date by which the proposal must be received.

(7) A statement that the Government may discuss the technical aspects of the proposal with the concern submitting the proposal.

(8) A statement that in the second step of the procurement only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for award; and that each bid in the second step must be based on the bidder's own technical proposal.

(9) A statement that sources submitting unacceptable technical proposals will be so notified upon completion of the technical evaluation.

(10) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When compliance with specifications permit utilization of essentially different technical approaches, it is generally in the interest of the Government to authorize the submission of multiple proposals. If multiple proposals are authorized the request shall include a statement substantially as folows:

Multiple Technical Proposals. In the first step of this two-step procurement, offerors are authorized and encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the offeror will be notified as to its acceptability.

(b) *Receipt and evaluation of technical proposals.* The following actions will be taken with respect to receipt and evaluation of technical proposals:

(1) Every precaution shall be taken to safeguard technical proposals against disclosure to unauthorized persons.

(2) Any reference to price or cost will be removed.

(3) Technical evaluation of the proposals will be based upon the criteria contained in the request for technical proposals and such evaluation will not include consideration of capacity or credit as defined in § 1–1.708.

(4) Technical proposals will be categorized as acceptable or unacceptable. Proposals will not be categorized as unacceptable when a reasonable effort on the part of the Government could bring the proposals to an acceptable status and increase competition. The contracting officer shall arrange for any necessary discussions with sources submitting technical proposals for the purpose of obtaining additional information or clarification which may be required. When, after discussion and submission of necessary information and clarification, technical proposals are determined to be acceptable, they will be so categorized. If, however, it is determined at any time that a technical proposal is not reasonably susceptible to being made acceptable, it should be classified as unacceptable and no discussions of it need thereafter be initiated.

(5) Upon final determination that a technical proposal is unacceptable, the contracting officer shall notify the source submitting the proposal of that fact. The notice shall indicate, in general terms the basis for such determination including a statement of whether rejection was based on failure to furnish sufficient information or an an unacceptable engineering approach.

(c) [Reserved]

(d) *Discontinuance.* If, as a result of the evaluation of technical proposals, it appears necessary to discontinue the two-step advertising method of procurement, the full facts and circumstances will be set forth in writing and submitted to the office which originally approved the method of procurement. If that office approves the discontinuance, each source will be notified in writing of the discontinuance and the reasons therefor.

§ 1–2.503–2 Step Two.

Upon completion of Step One, a formally advertised procurement in accordance with Subparts 1–2.2, 1–2.3, and 1–2.4 will be conducted, except that invitations for bids—

(a) Will be issued only to and considered only from those sources whose technical proposals have been evaluated and determined to be acceptable under Step One,

(b) Will include the following statement:

This invitation for bids is issued pursuant to two-step formal advertising procedures in subpart 1–2.5 of the Federal Procurement Regulations. Bids will be considered only from those firms who have submitted acceptable technical proposals pursuant to the first step of such procedures as initiated by-----

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(*Identify the request for technical proposals*)

Any bidder who has submitted multiple technical proposals in the first step of this two-step procurement may submit a separate bid covering each technical proposal which has been determined acceptable by the Government.

(c) Will prominently state that the supplies or services to be procured will be in accordance with the specifications and the bidder's technical proposal, as

finally accepted, under the request for technical proposals. This may be accomplished in the Schedule item description by a provision substantially in the form of the following example:

Radio antenna, in accordance with Exhibit No. _____ dated _____ (*use other description of specifications as appropriate*) and your Technical Proposal _____ (*insert specific identification of the bidder's proposal including any revision thereof as finally accepted*), incorporated herein by reference. Nothing contained in said Technical Proposal shall constitute a waiver of any of the provisions of said Exhibit (or specifications).

(d) Will not be synopsized (see Subpart 1-1.10) or publicly posted (see § 1-2.203-2), except that the names of firms which have submitted acceptable technical proposals in Step One of two-step formal advertising will be listed in the Commerce Business Daily for the benefit of prospective subcontractors. Such lists should be followed by a statement substantially as follows: It is suggested that small business firms or others interested in subcontracting opportunities in connection with this procurement make direct contact with the above firms.

PART 1-3—PROCUREMENT BY NEGOTIATION

Sec.
1-3.000 Scope of part.

Subpart 1-3.1—Use of Negotiation

1-3.100 Scope of subpart.
1-3.101 General requirements for negotiation.
1-3.102 Factors to be considered in negotiating contracts.
1-3.103 Dissemination of procurement information.
1-3.104 Disclosure of mistakes after award.

Subpart 1-3.2—Circumstances Permitting Negotiation

1-3.200 Scope of subpart.
1-3.201 National emergency.
1-3.202 Public exigency.
1-3.203 Purchases not in excess of $2,500.
1-3.204 Personal or professional services.
1-3.205 Services of educational institutions.
1-3.206 Purchases outside the United States.
1-3.207 Medicines or medical supplies.
1-3.208 Property purchased for authorized resale.
1-3.209 Subsistence supplies.
1-3.210 Impracticable to secure competition by formal advertising.
1-3.211 Experimental, developmental, or research work.
1-3.212 Purchases not to be publicly disclosed.
1-3.213 Technical equipment requiring standardization and interchangeability of parts.
1-3.214 Negotiation after advertising.
1-3.215 Otherwise authorized by law.

Subpart 1-3.3—Determinations, Findings, and Authorities

1-3.301 General.
1-3.302 Determinations and findings required.
1-3.303 Determinations and findings by the head of the agency.
1-3.304 [Reserved]
1-3.305 Form and requirements of determinations and findings.
1-3.306 Procedure with respect to determinations and findings.
1-3.307 [Reserved]
1-3.308 Preservation of data.

Subpart 1-3.4—Types of Contracts

1-3.400 Scope of subpart.
1-3.401 Types of contracts.
1-3.402 [Reserved]
1-3.403 Selection of contract type.
1-3.404 Fixed-price contracts.

Sec.
1-3.404-1 General.
1-3.404-2 Firm fixed-price contract.
1-3.404-3 Fixed-price contract with escalation.
1-3.404-4 Fixed-price incentive contract.
1-3.404-5 Prospective price redetermination at a stated time or times during performance.
1-3.404-6 [Reserved]
1-3.404-7 Retroactive price redetermination after completion.
1-3.405 Cost-reimbursement type contracts.
1-3.405-1 General.
1-3.405-2 Cost contract.
1-3.405-3 Cost-sharing contract.
1-3.405-4 Cost-plus-incentive-fee contract.
1-3.405-5 Cost-plus-a-fixed-fee contract.
1-3.406 Other types of contracts.
1-3.406-1 Time and materials contract.
1-3.406-2 Labor-hour contract.
1-3.407 Additional incentives.
1-3.407-1 General.
1-3.407-2 Contracts with performance incentives.
1-3.408 Letter contract.
1-3.409 Indefinite delivery type contracts.
1-3.410 Other types of agreements.
1-3.410-1 Basic agreement.
1-3.410-2 Basic ordering agreement.

Subpart 1-3.5—[Reserved]

Subpart 1-3.6—Small Purchases

1-3.600 Scope of subpart.
1-3.601 Purpose.
1-3.602 Policy.
1-3.603 Competition.
1-3.603-1 Solicitation.
1-3.603-2 Data to support small purchases.
1-3.604 Imprest funds (petty cash) method.
1-3.604-1 General.
1-3.604-2 Definition of imprest fund.
1-3.604-3 Agency responsibilities.
1-3.604-4 Use of imprest funds.
1-3.604-5 Limitations.
1-3.604-6 Procurement and payment.
1-3.604-7 Tax exemption certificates.
1-3.605 Purchase order forms.
1-3.605-1 Standard Form 44, Purchase Order—Invoice—Voucher.
1-3.605-2 Standard Forms 147 and 148, Order for Supplies or Services.
1-3.605-3 Agency order forms.
1-3.606 Blanket purchase arrangements.
1-3.606-1 General.
1-3.606-2 Authority to use blanket purchase arrangements.
1-3.606-3 Establishment of account.
1-3.606-4 Documentation.
1-3.606-5 Agency implementation.
1-3.607 Interagency use of local term contracts.

Subpart 1-3.7—[Reserved]

Subpart 1-3.8—Price Negotiation Policies and Techniques

Sec.	
1-3.800	Scope of subpart.
1-3.801	Basic policy.
1-3.802	Preparation for negotiation.
1-3.803	Type of contract.
1-3.804	Conduct of negotiations.
1-3.805	Selection of offerors for negotiation and award.
1-3.805-1	General.
1-3.805-2	Cost-reimbursement type contracts.
1-3.806	Cost, profit, and price relationships.
1-3.807	Pricing techniques.
1-3.807-1	General.
1-3.807-2	Requirements for price or cost analysis.
1-3.807-3	Cost and pricing data.
1-3.807-4	Certificate of current cost or pricing data.
1-3.807-5	Defective cost or pricing data.
1-3.807-6	Refusal to provide cost or pricing data.
1-3.807-7	Unacceptable substitutes for pricing negotiations.
1-3.807-8	Evaluation and pricing of individual contracts.
1-3.807-9	Specified contingencies.
1-3.807-10	Subcontracting considerations in cost analysis.
1-3.807-11	Overhead rate considerations.
1-3.807-12	Sole source items.
1-3.808	Profit or fee.
1-3.808-1	General.
1-3.808-2	Factors for determining fee or profit.
1-3.808-3	Minimal fees or cost sharing arrangements.
1-3.809	Audit as a pricing aid.
1-3.810	[Reserved]
1-3.811	[Reserved]
1-3.812	[Reserved]
1-3.813	Reproduction and startup and other nonrecurring costs.
1-3.814	Contract clauses.
1-3.814-1	Price reduction for defective cost or pricing data.
1-3.814-2	Audit and records.
1-3.814-3	Subcontractor cost and pricing data.

Subpart 1-3.9—Subcontracting Policies and Procedures

1-3.900	Scope of subpart.
1-3.901	General.
1-3.902	"Make-or-buy" programs.
1-3.902-1	Review of program.
1-3.902-2	Approval of programs.
1-3.902-3	Contract clause.
1-3.902-4	Administration of program.
1-3.903	Review and approval of contractor's purchasing system and subcontracts.
1-3.903-1	[Reserved]
1-3.903-2	Review and approval of subcontracts.

AUTHORITY: The provisions of this Part 1-3 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1-3.000 Scope of part.

(a) This part prescribes policies and procedures which shall be observed by executive agencies in connection with procurement by negotiation. While references are made in this part to authorizing sections of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, hereinafter referred to in this Part 1-3 as "the Act," to further the objectives of consistency and uniformity in Government procurement practices, such references shall be deemed likewise as references to comparable requirements under applicable laws.

Subpart 1–3.1—Use of Negotiation

§ 1–3.100 Scope of subpart.

This subpart deals with the nature and use of negotiation as distinguished from formal advertising (see Part 1–2), and with limitations upon that use.

§ 1–3.101 General requirements for negotiation.

(a) No procurement in excess of $2,500 shall be made by negotiation if the use of formal advertising is feasible and practicable under the existing conditions and circumstances even though such conditions and circumstances would otherwise satisfy the requirements of Subpart 1–3.2.

(b) No contract shall be entered into as a result of negotiation unless or until the following requirements have been satisfied:

(1) The contemplated procurement comes within one of the circumstances permitting negotiation enumerated in Subpart 1–3.2;

(2) Any necessary determinations and findings have been made (see Subparts 1–3.2 and 1–3.3);

(3) Such clearance or approval as is prescribed by applicable agency procedures has been obtained; and

(4) The prospective contractor has been determined to be responsible in accordance with § 1–1.310.

(c) Whenever property or services are to be procured by negotiation, proposals shall be solicited from the maximum number of qualified sources, including small business concerns (see § 1–1.702(b)(3)), consistent with the nature of and requirements for the supplies or services to be procured, in accordance with the basic policies set forth in this Part 1–3, to the end that the procurement will be made to the best advantage of the Government, price and other factors considered. Proposals shall be supported by statements and analyses of estimated costs or other evidence of reasonable prices and by such information concerning other vital matters as is deemed necessary by the contracting officer (see § 1–3.807). Unless award without written or oral discussion is permitted under § 1–3.805–1(a), negotiation shall thereupon be conducted in accordance with § 1–3.805, with due attention being given to the factors in § 1–3.102 and any other appropriate factors.

(d) Negotiated procurement shall be on a competitive basis to the maximum practical extent. When a proposed procurement appears to be noncompetitive, the procuring activity is responsible not only for assuring that competitive procurement is not feasible, but also for acting whenever possible to avoid the need for subsequent noncompetitive procurements. This action shall include both examination of the reasons for the procurement being noncompetitive and steps to foster competitive conditions for subsequent procurements, particularly as to the availability of complete and accurate data, reasonableness of delivery requirements, and possible breakout of components for competitive procurements.

§ 1–3.102 Factors to be considered in negotiating contracts.

During the course of negotiations, due attention shall be given to the following and any other appropriate factors:

(a) Comparison of prices quoted and consideration of other prices for the same or similar property or services, with due regard to production costs, including extra pay shift, multi-shift and overtime costs, and any other factor relating to the price, such as profits, cost of transportation, and cash discounts.

(b) Comparison of the business reputation, capacity, and responsibility of the respective persons or firms who submit offers.

(c) Consideration of the quality of the property or services offered, including the same or similar property or services previously furnished, with due regard to conformance with specification requirements.

(d) Consideration of delivery requirements.

(e) Discriminating use of price and cost analyses.

(f) Investigation of price aspects of any important subcontract.

(g) Individual bargaining, by mail or by conference.

(h) Consideration of cost sharing.

(i) Effective utilization in general of the most desirable type of contract.

(j) Consideration of the size of the business concern.

(k) Consideration as to whether the prospective supplier requires expansion or conversion of plant facilities.

(l) Consideration as to whether the prospective supplier is located in a surplus or scarce labor area.

(m) Consideration as to whether the prospective supplier will have an adequate supply of qualified labor.

(n) Consideration of subcontracting, with the extensive use of small business subcontractors being considered a favorable factor.

(o) Consideration of the existing and potential workload of the prospective supplier.

(p) Consideration of broadening the industrial base by the development of additional suppliers.

(q) Consideration of whether the contractor requires Government furnished property, machine tools, or facilities.

§ 1–3.103 Dissemination of procurement information.

(a) Synopses of proposed procurements and contract awards shall be prepared and publicized in the Department of Commerce "Synopsis of U.S. Government Proposed Procurement, Sales, and Contract Awards," in accordance with the requirements of §§ 1–1.1003 and 1–1.1004.

(b) Promptly after making awards in any procurement in excess of $10,000, the contracting officer normally shall give written notice to the unsuccessful offerors that their proposals were not accepted. Upon request, unsuccessful offerors whose offered prices were lower than those of the contractor which received the award shall be furnished the reasons why their proposals were not accepted; but in no event will an offeror's cost breakdown, profit, overhead rates, trade secrets, or other confidential business information be disclosed to any other offeror.

(c) Classified information shall be furnished only in accordance with agency regulations governing the handling of classified information.

§ 1–3.104 Disclosure of mistakes after award.

When a mistake in a contractor's proposal is not discovered until after award, the authority to correct mistakes contained in § 1–2.406–4 may be utilized in accordance with the limitations and procedures set forth therein.

Subpart 1–3.2—Circumstances Permitting Negotiation

§ 1–3.200 Scope of subpart.

Subject to the requirements and limitations prescribed in Subparts 1–3.1 and 1–3.3 and in this Subpart 1–3.2, or as otherwise provided by law, procurement may be effected by negotiation under any one of the exceptions contained in sections 302(c)(1) through 302(c)(15) of the Act (see §§ 1–3.201 through 1–3.215). Each negotiated contract shall contain a reference to the authority under which it was negotiated.

§ 1–3.201 National emergency.

(a) *Authority.* Section 302(c)(1) of the Act (41 U.S.C. 252(c)(1)) provides that purchases and contracts may be negotiated if "determined to be necessary in the public interest during the period of a national emergency declared by the President or by the Congress." At present, a state of national emergency exists by reason of Presidential Proclamation No. 2914 of December 16, 1950 (3 CFR).

(b) *Determination.* The Administrator of General Services has determined, pursuant to this section of the Act that it is necessary in the public interest during this period of national emergency that contracts be negotiated by executive agencies to assist labor surplus areas and small business concerns as provided in (c) of this § 1–3.201.

(c) *Application.* (1) The authority of this section of the Act, shall be used, in accordance with the foregoing determination, to negotiate contracts in furtherance of the policies for assistance to labor surplus areas as are stated in the Office of Civil and Defense Mobilization Defense Manpower Policy No. 4 (Revised). (See Subpart 1–1.8.)

(2) The authority of this section of the Act shall also be used, in accordance with the foregoing determination, to negotiate unilateral set-aside contracts with small business concerns, where small business joint set-aside determinations pursuant to Subpart 1–1.7 are not feasible, when it is determined by the contracting officer to be in the interest of (i) maintaining or mobilizing the Nation's full productive capacity, (ii) war or national defense programs, or (iii) assuring that a fair proportion of the total purchases and contracts for property and services for the Government are placed with small business concerns.

§ 1–3.202 Public exigency.

Pursuant to the authority of section 302(c)(2) of the Act (41 U.S.C. 252(c)(2)), purchases and contracts may be negotiated without formal advertising if "the public exigency will not admit of the delay incident to advertising."

(a) *Application.* In order for this authority to be used, the need must be compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the property or services to be purchased or contracted for were not furnished by a certain time, and when they could not be procured by that time by means of formal advertising. This applies irrespective of whether that urgency could or should have been foreseen. For example, this authority may be used when property or services are needed at once because of a fire, flood, explosion, or other disaster.

(b) *Limitations.* (1) Every contract negotiated under this authority shall be supported by a determination and findings justifying use of the authority. The determination and findings shall be prepared in accordance with Subpart 1–3.3 and signed by the contracting officer.

(2) When purchase action under this authority is based on telephone or other oral offers, a written confirmation of the accepted offer shall be obtained and made a part of the purchase case file. In addition, a record shall be established in such cases which shall contain, as a minimum, the following information with respect to each offer: name and address of each offeror quoting, description of item, unit price, delivery time, and discount terms offered. If quotations lower than the accepted quotation are received, the reasons for their rejection shall be recorded and made a part of the purchase file.

§ 1–3.203 Purchases not in excess of $2,500.

Pursuant to the authority of section 302(c)(3) of the Act (41 U.S.C. 252(c)(3)), purchases and contracts may be negotiated without formal advertising if "the aggregate amount involved does not exceed $2,500."

(a) *Application.* Contracts or purchases aggregating $2,500 or less shall be made under the authority of this § 1–3.203 rather than under any of the other sections in this Subpart 1–3.2. In arriving at the "aggregate amount involved," there must be included all property and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Procurements aggregating more than $2,500 shall not be broken down into separate procurements of less than $2,500.

(b) *Procedure.* Purchases and contracts aggregating not more than $2,500 shall be made in accordance with Subpart 1–3.6.

§ 1–3.204 Personal or professional services.

Pursuant to the authority of section 302(c)(4) of the Act (41 U.S.C. 252(c)(4)), purchases and contracts may be negotiated without formal advertising if "for personal or professional services."

(a) *Application.* This authority shall be used only when all of the following conditions have been satisfied:

(1) If personal services, they are required to be performed by an individual contractor in person (not by a concern); if professional services, they may be performed either by an individual contractor in person or a concern;

(2) The services are of a professional nature, or are to be performed under Government supervision and paid for on a time basis; and

(3) Procurement of the services is authorized by law and is effected in accordance with the requirements of applicable law.

(b) *Limitations.* (1) The authority of this § 1–3.204, and the conditions imposed upon its use, shall not apply to the procurement by negotiation of any types of services authorized under any other provisions of this subpart.

(2) Use of authority of this § 1–3.204 for professional engineering, architectural and landscape architectural services for any public building or public improvement (exclusive of bridges, roads, sidewalks, sewers, mains, or similar items) the construction cost of which is estimated to be $200,000 or more, shall be subject to prior clearance with the General Services Administration.

§ 1–3.205 Services of educational institutions.

Pursuant to the authority of section 302(c)(5) of the Act (41 U.S.C. 252(c)(5)), purchases and contracts may be negotiated without formal advertising if "for any service to be rendered by any university, college, or other educational institution."

(a) *Application.* The following are illustrative of circumstances with respect to which this authority may be used:

(1) Educational or vocational training services to be rendered by any university, college, or other educational institution in connection with the training and education of personnel, and for necessary material, services, and supplies furnished by any such institution in connection therewith.

(2) Experimental, developmental, or research work, (including services, tests and reports necessary or incidental thereto) to be conducted by any university, college, or other educational institution; and reports furnished in connection therewith.

(3) Analyses, studies, or reports (statistical or otherwise) to be conducted or prepared by any university, college, or other educational institution.

§ 1–3.206 Purchases outside the United States.

Pursuant to the authority of section 302(c)(6) of the Act (41 U.S.C. 252(c)(6)), purchases and contracts may be negotiated without formal advertising if "the supplies or services are to be procured and used outside the limits of the United States and its possessions." This authority shall be used only for the procurement of property or services which are actually purchased from sources outside and used outside the limits of the United States and its possessions, such as property or services (including construction) for overseas installations or for the use of overseas personnel.

§ 1–3.207 Medicines or medical supplies.

Pursuant to the authority of section 302(c)(7) of the Act (41 U.S.C. 252(c)(7)), purchases and contracts may be negotiated without formal advertising if "for medicines or medical property."

(a) *Application.* This authority shall be used only for such supplies as are peculiar to the field of medicine, includ-

ing technical equipment, such as surgical instruments, surgical and orthopedic appliances, X-ray supplies and equipment, and the like.

(b) *Limitations.* (1) Every contract negotiated under this authority shall be supported by a determination and findings prepared in accordance with Subpart 1–3.3 and signed by the contracting officer.

(2) Whenever the probable cost of property to be purchased by negotiation under this authority will exceed $10,000, suitable advance publicity of the proposed purchase shall be given for a period of at least 15 days wherever practicable. The requirement of "suitable advance publicity" shall be deemed to be complied with if circulation of notice of intent to negotiate is made to business concerns engaged in the manufacture and/or sale of the products involved, including qualified concerns known to have current interest in selling such products to the Government. When desirable, publication of the intention to negotiate through newspapers or other similar media may be used to supplement circularization.

§ 1–3.208 Property purchased for authorized resale.

Pursuant to the authority of section 302(c)(8) of the Act (41 U.S.C. 252(c)(8)), purchases and contracts may be negotiated without formal advertising if "for property purchased for authorized resale."

(a) *Application.* This authority shall be used only for purchases for resale through commissaries or other similar facilities, and ordinarily only for purchases of articles with brand names or of a proprietary nature as required by patrons of the selling activities.

(b) *Limitations.* (1) Every contract negotiated under this authority shall be supported by a determination and findings prepared in accordance with Subpart 1–3.3 and signed by the contracting officer.

(2) Whenever the probable cost of property to be purchased by negotiation under this authority will exceed $10,000, suitable advance publicity (see § 1–3.207(b)(2)) of the proposed purchase shall be given for a period of at least 15 days, whenever practicable. When exercising this authority, regardless of the probable cost, competitive proposals shall be solicited from all such qualified sources of supply as the contracting officer deems necessary to assure full and free competition, consistent with the type and character of the procurement.

§ 1–3.209 Subsistence supplies.

Pursuant to the authority of section 302(c)(9) of the Act (41 U.S.C. 252(c)(9)), purchases and contracts may be negotiated without formal advertising if "for perishable or nonperishable subsistence supplies."

(a) *Application.* This authority may be used for the purchase of any and all kinds of subsistence supplies.

(b) *Limitation.* When exercising this authority, competitive proposals shall be solicited from all such qualified sources of supply as the contracting officer deems necessary to assure full and free competition, consistent with the type and character of the procurement.

§ 1–3.210 Impracticable to secure competition by formal advertising.

Pursuant to the authority of section 302(c)(10) of the Act (41 U.S.C. 252(c)10)), purchases and contracts may be negotiated without formal advertising if "for property or services for which it is impracticable to secure competition."

(a) *Application.* The following are illustrative of circumstances with respect to which this authority may be used:

(1) When property or services can be obtained from only one person or firm (sole source of supply).

(2) When competition is precluded because of the existence of patent rights, copyrights, secret processes, control of basic raw material, or similar circumstances (however, the mere existence of such rights or circumstances does not in and of itself justify the use of this authority).

(3) When bids have been solicited pursuant to the requirements of Part 1–2, and no responsive bid has been received from a responsible bidder.

(4) When bids have been solicited pursuant to the requirements of Part 1–2 and the responsive bid or bids do not cover the quantitative requirements of the invitation for bids, in which case, negotiation is permitted for the remaining requirements.

(5) When the contemplated procurement is for electric power or energy, gas (natural or manufactured), water, or other utility services or when the contemplated procurement is for construction of a part of a utility system and it would not be practicable to allow a contractor other than the utility company itself to work upon the system.

(6) When the contemplated procurement is for training film, motion picture productions, or manuscripts.

(7) When the contemplated procurement is for technical nonpersonal services in connection with the assembly, installation, or servicing (or the instruction of personnel therein) of equipment of a highly technical or specialized nature.

(8) When the contemplated procurement is for studies or surveys other than those which may be negotiated under the authority cited in §§ 1–3.205 or 1–3.211.

(9) When the contemplated procurement involves maintenance, repair, alteration, or inspection and the exact nature or amount of the work to be done is not known.

(10) When the contemplated procurement is for stevedoring, terminal, warehousing, or switching services, and when either the rates are established by law or regulation, or the rates are so numerous or complex that it is impracticable to set them forth in the specifications of a formal invitation for bids.

(11) When the contemplated procurement is for commercial transportation, including time, space, trip, and voyage charters, except for such transportation services as are furnished by common carriers (for which negotiation is authorized under § 1–3.215 and section 321 of the Transportation Act of 1940, 49 U.S.C. 65, and including services for the operation of Government-owned vehicles, vessels, or aircraft.

(12) When the contemplated contract is for services related to the procurement of perishable subsistence, such as protective storage, icing, processing, packaging, handling, and transportation, and it is impracticable to advertise for such services a sufficient time in advance of the delivery of the perishable subsistence.

(13) When it is impossible to draft for an invitation for bids adequate specifications or any other adequately detailed description of the required property or services.

(14) When the contemplated procurement is for parts or components being procured as replacement parts in support of equipment specially designed by the manufacturer, where data available is not adequate to assure that the part or component will perform the same function in the equipment as the part of component it is to replace.

(15) When the contemplated procurement involves construction where a contractor or group of contractors is already at work on the site, and it would not be practicable to allow another contractor or an additional contractor to work on the same site or when the amount is too small to interest other contractors to mobilize and demobilize.

(b) *Limitations.* The authority cited in this § 1–3.210 shall not be used under the circumstances described in paragraphs (3) and (4) of § 1–3.210(a) where "Small Business Restricted Advertising" has been used. However, it may be used in the case of partial set-asides unless in the judgment of the contracting officer the failure to obtain sufficient responsive bids on the non-set-aside portion was caused by the existence of the set-aside. Every contract negotiated under this authority shall be supported by a determination and findings justifying use of the authority. The determination and findings shall be prepared in accordance with Subpart 1–3.3 and signed by the contracting officer.

§ 1–3.211 Experimental, developmental, or research work.

Pursuant to the authority of section 302(c)(11) of the Act (41 U.S.C. 252(c)(11)), purchases and contracts may be negotiated without formal advertising if "the agency head determines that the purchase or contract is for experimental, developmental, or research work, or for the manufacture or furnishing of property for experimentation, development, research, or test."

(a) *Application.* The following are illustrative of circumstances with respect to which this authority may be used:

(1) When the contemplated contract relates to theoretical analysis, exploratory studies, and experimentation in any field of science or technology.

(2) When the contemplated contract is for developmental work and calls for the practical application of investigative findings and theories of a scientific or technical nature.

(3) When the contemplated contract is for such quantities and kinds of equipment, supplies, parts, accessories, or pat-

ent rights thereto, and drawings or designs thereof, as are necessary for experimentation, development, research, or test.

(4) When the contemplated contract is for services, tests, and reports necessary or incidental to experimental, developmental, or research work.

(b) *Limitations.* This authority shall not be used for contracts for quantity production, except that such quantities may be purchased under this authority as are necessary to permit complete and adequate experimentation, development, research, or test; accordingly, research or development contracts which call for the production of a reasonable number of experimental or test models, or prototypes, shall not be regarded as contracts for quantity production. In order for this authority to be used, a determination and findings justifying use of the authority must be prepared in accordance with Subpart 1-3.3.

(c) *Reporting requirement.* Section 302(c)(11) of the Act requires that at the end of each six-month period there shall be furnished to the Congress a report of contracts entered into pursuant to this authority. Each executive agency entering into such contracts, under the authority of section 302(c)(11) of the Act, shall submit agencywide reports to the General Services Administration as provided in (1) and (2) below. The General Services Administration will submit consolidated reports to the Congress.

(1) Reports shall be prepared semiannually to cover the periods January 1 through June 30, and July 1 through December 31 and be submitted in an original and one copy to the General Services Administration, Office of Finance and Administration, General Services Building, Washington, D.C., 20405, within 30 work days after the close of the period covered by the report.

(2) Reports should contain the following information for each contract entered into pursuant to section 302(c)(11) of the Act during the report period :

(i) Name of contractor;

(ii) Dollar amount of contract (including amendments); and

(iii) Brief description of the work required to be performed under the contract. (When necessary, because of the national security, the word "classified" may be used in lieu of the description.)

(3) Negative reports are not required.

§ 1-3.212 Purchases not to be publicly disclosed.

Pursuant to the authority of section 302(c)(12) of the Act (41 U.S.C. 252(c)(12)), purchases and contracts may be negotiated without formal advertising if "for property or services as to which the agency head determines that the character, ingredients, or components thereof are such that the purchase or contract should not be publicly disclosed."

(a) *Application.* This authority may be used for purchases or contracts classified "Confidential" or higher, or where, because of other considerations, the contract should not be publicly disclosed.

(b) *Limitations.* In order for this authority to be used, a determination and findings justifying use of the authority must be prepared in accordance with Subpart 1-3.3.

§ 1-3.213 Technical equipment requiring standardization and interchangeability of parts.

(a) *Authority.* (1) Pursuant to the authority of section 302(c)(13) of the Act (41 U.S.C. 252(c)(13)), purchases and contracts may be negotiated without formal advertising if "for equipment which the agency head determines to be technical equipment, and as to which he determines that the procurement thereof without advertising is necessary in special situations or in particular localities in order to assure standardization of equipment and interchangeability of parts and that such standardization and interchangeability is necessary in the public interest."

(2) This § 1-3.213 provides authority only to employ negotiation as distinguished from advertising and does not constitute authority to make purchases of equipment. Authority for the latter must be elsewhere derived.

(b) *Application.* (1) This authority may be used for procuring additional units and replacement items of specified makes and models of technical equipment and spare parts by negotiation in order to assure standardization of equipment and interchangeability of parts where, in special situations or in particular localities, such standardization and interchangeability is determined necessary in the public interest. Examples of situations where this authority may be used are:

(i) Where, in special situations or in particular localities, it has been found necessary to limit the variety and quantity of parts that must be carried in stock.

(ii) Where standardization of technical equipment is necessary in special situations or in particular localities so that parts may be available and interchanged among items of damaged or worn equipment.

(iii) Where, in special situations or particular localities, technical equipment is available from a number of suppliers which would have such varying performance characteristics (notwithstanding detailed specifications and rigid inspection) as would prevent standardization and interchangeability of parts.

(2) Consideration shall be given to the following and other pertinent factors before making a determination to procure specified makes and models under the authority of this § 1-3.213:

(i) The practicability of interchanging parts and cannibalizing equipment.

(ii) The probability that future procurement of the selected item of equipment can be affected at reasonable prices.

(iii) Whether the standardization will appreciably reduce the variety and quantity of parts that must be carried in stock.

(iv) The value of similar equipment and its supporting parts on hand.

(v) Possible savings in training personnel.

(vi) Whether the standardization will adversely affect existing specifications and standards.

(vii) The degree to which the current design of the specified make and model has been changed from the design of equipment of the same make and model already in the supply system.

(3) Standardization approval under this authority shall be for a stated period of time which bears a reasonable relationship to the life of the equipment.

(c) *Justification.* (1) In arriving at a determination that standardization of equipment and interchangeability of its parts are necessary in the public interest, such standardization must be in fact fully justified as genuinely "necessary in the public interest." It is not sufficient that it merely be generally desirable. Nor is an arbitrary or perfunctory conclusion sufficient. Facts must clearly show the compelling reasons why it is necessary, as for example:

(i) Substantial savings possible through standardization (estimated annual savings to be indicated when possible).

(ii) Minimizing potential breakdown of a specifically identified service or function which might endanger life, property or the orderly conduct of vital Government functions.

(2) The term "in special situations" precludes application of the authority to generally prevailing or generalized conditions. The law assumes that it will be necessary to employ the authority only under unusual or abnormal conditions.

(3) The term "particular localities" has reference to remote locations which are not only remote in the sense of physical distance from large metropolitan areas, but remote from available stocks of replacement parts and, possibly, related service facilities. For example, it is not enough to conclude that standardization is required of a motor vehicle in Alaska because of remote location if in fact replacement parts of various vehicle makes are readily available. It must be shown expressly, and not by inference, (i) that the location involved is inaccessible because of stated conditions, such as the absence of a connected road system, or (ii) that there are not available within stated reasonable distances, adequate stocks of replacement parts or personnel and facilities necessary to perform required services, and that there are circumstances which make it impractical to maintain at the location such stocks and furnish such service for more than a particular number of makes of vehicles. Most using activities within the United States (excluding Alaska) could not be considered to meet these requirements. However, there may be cases where, because of extremely unusual conditions, standardization at a particular location within the United States may be necessary in the public interest.

(d) *Limitations.* (1) This authority shall not be used for initial procurement of equipment and spare parts which ultimately will be standardized, or for the purpose of selecting arbitrarily the equipment of certain suppliers; nor shall it be used unless and until the agency head has determined that:

(i) The equipment constitutes technical equipment:

(ii) Standardization of such equipment and interchangeability of its parts

are necessary in the public interest; and

(iii) Negotiation is necessary in special situations or in particular localities in order to assure required standardization of equipment and interchangeability of parts.

(e) *Determination and findings.* (1) In order for this authority to be used, a determination and findings justifying use of the authority must be prepared in accordance with Subpart 1–3.3.

(2) The following example of findings and determinations is illustrative of the type and amount of information which may be considered sufficient to justify negotiation under section 302 (c) (13) of the Act:

DEPARTMENT OF THE INTERIOR

FINDINGS AND DETERMINATIONS UNDER SECTION 302(c)(13) OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949

Findings

In accordance with the requirements of sections 302(c)(13) and 307 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, I make the following findings:

1. The Alaska Road Commission has stated that it has a requirement for 25 _____ (Make and _____ trucks as set forth in (letter) or (req-
(type)
uisition) dated _____, and has submitted, by letter dated _____; signed by _____, information in justifica-
(Name and title)
tion for such purchase under section 302(c)(13), as described or included in the findings set forth below.

2. The trucks in question are required for use at _____, Alaska. This lo-
(District or area)
cation is accessible only by _____
(Indicate: i.e. "boat"
_____ and for several months
or "boat and air" etc.)
each year is accessible only by _____. The Government's operations which consist of _____, require the use
(General description only)
of trucks of this type. The location presently has _____ of these trucks with stocks of spare parts determined necessary from experience to maintain these trucks in proper operational efficiency. There are also _____ trucks of other manufacture with required stocks of spare parts which will gradually be eliminated by standardization. No commercial supply or service centers are maintained at this remote location or within approximately _____ miles thereof.

3. It is impractical to provide service and repair facilities for numerous makes of vehicles and to maintain stocks of parts necessary to keep the various makes in operating condition. Each make of vehicle usually requires additional special equipment for proper servicing and repair. This results in added cost, housing, and related administrative expense. Similarly each additional make requires the maintenance of separate stocks of spare service and repair parts which require additional bins, storage, and clerical and administrative expenses. The annual savings in cost estimated to result from the maintenance of reduced stocks of parts made possible by standardizing on these trucks is _____.

4. (State other factors and details as applicable.)

5. Under these circumstances the Alaska Road Commission regards the standardization and interchangeability as necessary in the public interest.

Determinations

1. Based upon the foregoing findings, I hereby determine, within the meaning of section 302(c)(13) of the Federal Property and Administrative Services Act of 1949, that:

A. The equipment described is technical equipment;

B. Negotiation is necessary, in the situation and in the locality described, in order to assure standardization of the equipment and interchangeability of parts; and

C. Such standardization and interchangeability is necessary in the public interest.

2. Upon the basis of these findings and determinations, I hereby authorize the negotiation of a contract (or contracts) for procurement of the equipment described in these findings pursuant to section 302(c)(13) of the Federal Property and Administrative Services Act of 1949.

_____,
Secretary of the Interior.

§ 1–3.214 Negotiation after advertising.

Pursuant to the authority of section 302(c)(14) of the Act (41 U.S.C. 252(c)(14)), purchases and contracts may be negotiated without formal advertising if "for property or services as to which the agency head determines that bid prices after advertising therefor are not reasonable (either as to all or some part of the requirements) or have not been independently arrived at in open competition."

(a) *Application.* This authority is designed to cope with cases where bids received after advertising are too high, although not actually identical or apparently collusive, and cases of indicated possible collusive bidding. Indications of possible violation of antitrust laws or collusive bidding are to be reported in accordance with Subpart 1–1.9. Where, after advertising, some of the bids do not appear reasonable, and the reasonable bids do not cover the full quantity required, the contracting officer may, at his discretion, accept the reasonable bids. Negotiation for the balance of the quantity required is subject to the requirements of § 1–3.214(b).

(b) *Limitations.* This authority shall not be used unless it has been determined in accordance with Subpart 1–3.3 that the bid prices, after formal advertising for the property or services, are not reasonable or were not independently arrived at in open competition. Also, after such determination has been made and after rejection of bids, no contract shall be negotiated under this authority unless:

(1) Notification of intention to negotiate and reasonable opportunity to negotiate have been given to each responsible bidder which submitted a bid in response to the invitation for bids; and

(2) The negotiated price is the lowest negotiated price offered by any responsible supplier.

§ 1–3.215 Otherwise authorized by law.

(a) Pursuant to the authority of section 302(c)(15) of the Act (41 U.S.C. 252(c)(15)), purchases and contracts may be negotiated without formal advertising if "otherwise authorized by law." This provision preserves the authority to negotiate contracts conferred by other legislation. The following are typical examples:

(1) Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.).

(2) Small Business Act (15 U.S.C. 631).

(3) Section 321 of the Transportation Act of 1940 (49 U.S.C. 65). (This law permits negotiation for transportation services when the services required can be procured from any common carrier. This authority shall not be used to eliminate competition from companies which are not common carriers when the services may also be performed by such companies.)

(b) When negotiating pursuant to other statutory authority, the purchase or contract instrument should cite the applicable law authorizing negotiation.

Subpart 1–3.3—Determinations, Findings, and Authorities

§ 1–3.301 General.

(a) The determinations and supporting findings referred to in this Part 1–3 are documents required to justify the use of the authority (1) to enter into contracts by negotiation, (2) to make advance payments under negotiated contracts, (3) to determine the kind of contract to be used, (4) to determine the estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contracts, or (5) to waive a requirement for the submission and certification by contractors or subcontractors of cost or pricing data.

(b) Determinations and findings ordinarily shall be made only with respect to individual purchases or contracts. However, where class determinations and findings are made, they shall not be construed to authorize the procurement by negotiation of supplies or services within the class which feasibly and practicably could be procured through formal advertising (see § 1–1.301–2).

(c) Pursuant to section 307 of the Act (41 U.S.C. 257), the determinations and decisions provided in Title III of the Act to be made by the agency head, and the written findings in support of the determinations required by §§ 1–3.211 through 1–3.214 and paragraphs (a), (b), and (d) of § 1–3.302, shall be final.

§ 1–3.302 Determinations and findings required.

In addition to the determinations and findings required by Subpart 1–3.2, the following determinations in connection with the negotiation of contracts are required to be made in writing, supported by written findings as specified in § 1–3.305:

(a) The determination required by section 304(b) of the Act (41 U.S.C. 254 (b)) as to estimated cost of, and fees to be paid under, cost-plus-a-fixed-fee contracts (see §§ 1–3.401, 1–3.405–4, and 1–3.405–5(c)(2));

(b) The determination required by section 304(b) of the Act that the use of a cost or a cost-plus-a-fixed-fee contract or an incentive-type contract is likely to be less costly than other methods or that it is impracticable to secure property or services of the kind or quality required without the use of a cost or cost-plus-a-fixed-fee contract or an incentive-type contract (see §§ 1–3.404–4 and 1–3.405–1);

(c) The determination required by section 303(b) of the Act (41 U.S.C. 253(b)) that it is in the public interest to reject all bids;

(d) The determination required by section 305(c) of the Act (41 U.S.C. 255 (c)) that the making of advance payments would be in the public interest (see § 1–30.405);

(e) The determinations required with respect to waiving a requirement for the submission of cost or pricing data and the certification thereof (see § 1–3.807–3 (b)(2) and for the inclusion of the clauses required by §§ 1–3.814–1 through 1–3.814–3 in contracts with foreign governments or agencies thereof.

§ 1–3.303 Determinations and findings by the head of the agency.

The determinations, and written findings in support thereof, required by §§ 1–3.211 through 1–3.313, may be made only by the head of the agency, except that the authority to make the determination and findings required by § 1–3.211 may be delegated by the head of the agency to a chief officer responsible for procurement and only with respect to contracts which will not require the expenditure of more than $25,000.

§ 1–3.304 [Reserved]

§ 1–3.305 Form and requirements of determinations and findings.

(a) The form of determination and findings required shall be sufficient to satisfy the requirements of the applicable provisions of law and of this Part 1–3, and shall be in such form as may be prescribed in agency instructions.

(b) Each determination and findings required by Subpart 1–3.2 and § 1–3.302 shall be signed by the official making the determination and findings and shall set out enough facts and circumstances to clearly justify the specific determination made. Each determination and findings required to negotiate either an individual contract or a class of contracts under §§ 1–3.202, 1–3.207, 1–3.208, 1–3.210, 1–3.212 through 1–3.214, and for the procurement of property or supplies under § 1–3.211, shall set forth enough facts and circumstances to clearly and convincingly establish that the use of formal advertising would not have been feasible or practicable.

§ 1–3.306 Procedure with respect to determinations and findings.

Determinations and findings for authority to negotiate required by §§ 1–3.202, 1–3.207, 1–3.208, and 1–3.210 through 1–3.214 shall be signed by the appropriate official prior to issuance of a request for proposals. Any modifications of such determinations and findings subsequently found to be necessary will not require cancellation of the request for proposals if the determinations and findings as modified support negotiation under any one of the authorities cited in Subpart 1–3.2. Where the facts continue to support the negotiation but under an authority for which a determination and findings is not required, cancellation of the determination and findings will not require cancellation of the request for proposals.

§ 1–3.307 [Reserved]

§ 1–3.308 Preservation of data.

(a) The originals of all determinations and findings required by this Part 1–3, and copies of supporting documents, shall be preserved and available in the files of the agency for a period of at least six years following the date of the determination.

(b) A copy of each determination and findings required by Subpart 1–3.2 and by (b) and (d) of § 1–3.302 shall be filed with the General Accounting Office copy of the contract in connection with which the determination and findings is made.

(c) In any case where a purchase or contract is negotiated under § 1–3.201 and §§ 1–3.207 through 1–3.214, data with respect to negotiation shall be preserved in the files of the agency for a period of six years following final payment on such purchase or contract. Such data shall be sufficient to show:

(1) The reason and basis for use of negotiation;

(2) The extent of competition secured; and

(3) Other essential information bearing on the actual negotiations.

(d) Where in other cases of negotiation, the requirements of paragraphs (a) and (c) of this § 1–3.308 are not applicable, final data shall nevertheless be made a part of the file to support the action taken. This includes the informal records required with respect to purchases resulting from oral offers.

Subpart 1–3.4—Types of Contracts

§ 1–3.400 Scope of subpart.

This subpart (a) describes and defines types of contracts for procurement by negotiation, (b) defines the areas of applicability in which each type of contract may be used appropriately and sets forth considerations and policies governing the choice of type of contract, and (c) imposes conditions on the use of certain of the available types of contracts.

§ 1–3.401 Types of contracts.

(a) A contract negotiated under this Part 1–3 may be of any type or combination of types described in this Subpart 1–3.4 which will promote the best interests of the Government, subject to the restrictions in § 1–3.401(b). The respective contract types vary as to (1) the degree and timing of responsibility assumed by the contractor for the costs of performance, and (2) the amount and type of profit incentive offered the contractor to achieve or exceed specified standards or goals. With regard to degree of cost responsibility, the various types of contracts may be arranged in order of decreasing contractor responsibility for the costs of performance. At one end is the firm fixed-price contract under which the parties agree that the contractor assumes full responsibility in the form of profits or losses, for all costs under or over the firm fixed price. At the other end of this range is the cost-plus-a-fixed-fee contract where profit, rather than price, is fixed and the contractor's cost responsibility is therefore minimal. In between are the various incentive contracts which provide for varying degrees of contractor cost responsibility, depending upon the degree of uncertainty involved in contract performance.

(b) The cost-plus-a-percentage-of-cost system of contracting shall not be used. In furtherance of this policy, all prime contracts (including letter contracts) on other than a firm fixed-price basis, shall by an appropriate clause prohibit cost-plus-a-percentage-of-cost subcontracts. In addition, all cost-plus-fee subcontracts under prime contracts which are on other than a firm fixed-price basis shall limit the payment of fees to those prescribed by agency procedures within the limitations of section 304 of the Act (see § 1–3.405–5(c)).

§ 1–3.402 [Reserved]

§ 1–3.403 Selection of contract type.

(a) *General.* The selection of contract type is generally a matter for negotiation and requires the exercise of judgment. Type of contract and pricing are interrelated and should be considered together in negotiation in accordance with § 1–3.803. Because the type of contract affects the resulting price to the Government, use of an appropriate type is of primary importance in obtaining fair and reasonable prices. Each contract file shall include documentation to show why the particular contract type was used, except for small purchases (see Subpart 1–3.6); repetitive types of procurement usually accomplished on a firm fixed-price basis, such as subsistence procurement; or awards made on the set-aside portion of formally advertised procurements partially set aside for either small business or labor surplus area concerns. Although no absolute rules can be laid down, there are many factors which should me considered in the use of an appropriate type of contract, including those which follow.

(1) *Price analysis.* Price analysis (see § 1–3.807–2(b)) may provide a basis for selection of contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered, even where there may not be full and free competition.

(2) *The cost estimate.* In the absence of effective price competition and where price analysis is not sufficient, the cost estimates of the offeror and of the Government are the bases for negotiation of any pricing arrangements. As a minimum, the uncertainties involved in performing at the cost estimated, and their possible impact on costs, must be identified and evaluated so that a pricing arrangement can be negotiated which imposes a reasonable degree of cost responsibility upon the contractor. The following are some of the considerations which may influence the estimate and hence, the selection of contract type:

(i) Type and complexity of the item.

(ii) Stability of design, which in turn may influence such subordinate considerations as the adequacy and firmness of specifications, and the availability of relevant historical pricing data and prior production experience.

(iii) Prospective period of contract performance and length of production run at the time of negotiation.

(iv) Extent and nature of subcontracting contemplated.

(v) Adequacy of the contractor's estimating system.

(3) *Urgency of the requirement.* In certain procurements the best interests of the Government may dictate that the urgency of the requirement be a primary consideration in selection of contract type.

(4) *Technical capability and financial responsibility of the contractor.*

(5) *Adequacy of the contractor's accounting system.* Before reaching agreement on price and contract type, determination should be made that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated. This may be particularly critical where the contract type requires revision of price while performance is in progress, or where a cost-reimbursement type of contract is being considered and all current or past experience with the contractor has been on a fixed-price basis (see § 1–3.809).

(6) *Other concurrent contracts.* If performance under a proposed procurement involves operations which concurrently are required in performance of other work, the nature of the pricing arrangements on the other work may be important in selecting the contract type for the proposed procurement. This factor may not be so important where close controls exist that will assure proper allocation of costs.

(b) *Research.* In the majority of research programs, including preliminary explorations and studies, the work to be performed cannot be described precisely. Hence, the negotiation of cost-plus-a-fixed-fee or cost-sharing contracts frequently is necessary. However, where the level of contractor effort desired can be identified and agreed upon in advance of performance, negotiation of a firm fixed-price contract should be considered.

(c) *Development and test.* Where possible, a final commitment to undertake specific product development and test should be avoided until preliminary exploration and studies have indicated a high degree of probability that the development is feasible and the Government generally has determined both its minimum requirements for product performance and schedule completion and its desired performance and schedule completion objectives. The precision with which the performance objectives can be defined will largely determine the type of contract employed, with firm-fixed-price contracts receiving first consideration. In development programs where use of cost and performance incentives are considered desirable and administratively practicable, fixed-price-incentive and cost-plus-incentive-fee contracts are to be considered in that order of preference. The solicitation should describe the Government's minimum requirements for product performance and schedule completion, its desired performance and schedule completion objectives, and the type of contract contemplated. The Government's minimum requirements for product performance and schedule completion generally should not be considered subject to negotiation. The solicitation should also indicate the factors on which the Government will evaluate proposals and which of those factors the Government considers most important (*e.g.*, greater weight may be assigned to the range of an aircraft, than to its speed). When incentive contracts are to be used, contractors shall be required to submit targets and incentive sharing arrangements for meeting or surpassing the Government's requirements for performance and for schedule completion, together with an estimate of the cost thereof. The targets proposed by each offeror, the estimated cost thereof, and the sharing arrangements proposed should, to the extent practical, be considered by the Government in the contractor selection process. When this approach to contractor selection has been used, the resulting development program should be performed under an incentive contract which includes performance, schedule completion, and cost targets, the requisite test procedures by which attainment of performance targets will be measured, and provisions for varying profits to the extent targets are or are not met. In order to provide maximum incentive, the swing of profit variation should in each case be as wide as practical (see § 1–3.405–4(b)). The introduction of incentives into development is of such compelling importance that, to the extent practical, firms not willing to ne-

gotiate appropriate incentive provisions may be excluded from consideration for the award of development contracts.

§ 1–3.404 Fixed-price contracts.

§ 1–3.404–1 General.

Fixed-price contracts are of several types so designed as to facilitate proper pricing under varying circumstances. The fixed-price type contracts provide for a firm price, or under appropriate circumstances may provide for an adjustable price, for the supplies or services which are being procured. In providing for an adjustable price, the contract may fix a ceiling price, target price (including target cost), or minimum price. Unless otherwise provided in the contract, any such ceiling, target, or minimum price is subject to adjustment only if required by the operation of any contract clause which provides for equitable adjustment, escalation, or other revision of the contract price upon the occurrence of an event or a contingency.

§ 1–3.404–2 Firm fixed-price contract.

(a) *Description.* The firm fixed-price contract provides for a price which is not subject to any adjustment by reason of the cost experience of the contractor in the performance of the contract. This type of contract, when appropriately applied as set forth in this § 1–3.404–2, places maximum risk upon the contractor. Because the contractor assumes full responsibility, in the form of profits or losses, for all costs under or over the firm fixed price, he has a maximum profit incentive for effective cost control and contract performance. Use of the firm fixed-price contract imposes a minimum administrative burden on the contracting parties.

(b) *Application.* The firm fixed-price contract is suitable for use in procurements when reasonably definite design or performance specifications are available and whenever fair and reasonable prices can be established at the outset, such as where:

(1) Adequate competition has made initial proposals effective;

(2) Prior purchases of the same or similar supplies or services under competitive conditions or supported by valid cost or pricing data provide reasonable price comparisons;

(3) Cost or pricing information is available permitting the development of realistic estimates of the probable costs of performance;

(4) The uncertainties involved in contract performance can be identified and reasonable estimates of their possible impact on costs made, and the contractor is willing to accept a firm fixed price at a level which represents assumption of a reasonable proportion of the risks involved; or

(5) Any other reasonable basis for pricing can be used consistent with the purpose of this type of contract.

The firm fixed-price contract is particularly suitable in the purchase of standard or modified commercial items, or of any other items for which sound prices can be developed.

§ 1–3.404–3 Fixed-price contract with escalation.

(a) *Description.* The fixed-price contract with escalation provides for the upward and downward revision of the stated contract price upon the occurrence of certain contingencies which are specifically defined in the contract. The risks in a fixed-price contract are reduced by the inclusion of escalation provisions in which the parties agree to revise the stated price upon the happening of a prescribed contingency. Where escalation is agreed upon, upward adjustments shall be limited by the establishment of a reasonable ceiling, and provisions will be included for downward adjustments in those instances where the prices or rates fall below the base levels provided in the contract. In the establishment of the base levels from which escalation will operate, contingency allowances shall be eliminated from the base to be set forth in the contract to the extent that escalation is provided for any particular contingency. Generally, escalation provisions are of two broad types.

(1) Price escalation provides for adjustment of the contract price on the basis of increases or decreases from an agreed upon level in published or established prices of specific items or in price levels of the contract end items.

(2) Labor and material escalation provides for adjustment of the contract price on the basis of increases or decreases from agreed standards or indices in wage rates, specific material costs, or both.

(b) *Application.* Use of this type of contract is appropriate where serious doubt exists as to the stability of market and labor conditions which will exist during an extended period of production and where contingencies which would otherwise be included in a firm fixed-price contract are identifiable and can be covered separately by escalation. Its usefulness is limited by the difficulties inherent in its administration. Escalation should be restricted, to the extent possible, to industry-wide contingencies, and labor and material escalation should be limited to contingencies beyond the normal control of the contractor.

§ 1–3.404–4 Fixed-price incentive contract.

(a) *Description*—(1) *General.* The fixed-price incentive contract is a fixed-price type contract with provision for adjustment of profit and establishment of the final contract price by a formula based on the relationship which final negotiated total cost bears to total target costs.

(2) *Firm target.* Under the firm target type of incentive contract there is negotiated at the outset a target cost, a target profit, a price ceiling (but not a profit ceiling or floor), and a formula for establishing final profit and price. After performance of the contract, the final cost is negotiated and the final contract price is then established in accordance with the formula. Where the final cost is less than target cost, application of the formula results in a final profit greater than the target profit; conversely, where final cost is more than target cost, application of the formula results in a final profit less than the target profit, or even a net loss. Thus, within the price ceiling, the formula provides for the Government and the contractor to share the responsibility for costs greater or less than those originally estimated, as determined by a comparison of negotiated final cost with target cost. Because the profit resulting from application of the formula is in inverse relationship to costs, the formula provides the contractor in advance with a calculable profit incentive to control costs. To provide an incentive consistent with the circumstances, the formula should reflect the relative risks involved in contract performance. Thus, it is appropriate in certain procurements to establish a formula which provides for contractor assumption of a considerable or major share of total cost responsibility. In such circumstances, when a major share of total cost responsibility is assumed by the contractor, every consideration should be given to establishing target profits which reflect assumption of such responsibility.

(3) *Successive targets.* Under the successive targets type of incentive contract, there is negotiated at the outset an initial target cost, an initial target profit, a price ceiling, a formula for fixing the firm target profit, and a production point at which the formula will be applied. Generally, the production point will be prior to delivery or shop completion of the first item. This formula does not apply for the life of the contract but simply is used to fix the firm target profit for the contract. The initial formula shall also provide for a ceiling and floor on the firm target profit. To provide an incentive consistent with the circumstances, the formula for fixing the firm target profit should reflect the relative risk involved in establishing an incentive arrangement where cost and pricing information were not sufficient to permit the negotiation of firm targets at the outset (see § 1–3.404–4(b)(3)). Thus it normally will not provide for as great a degree of contractor cost responsibility as would a formula for establishing final profit and price. When the production point for applying the formula is reached, the firm target cost is then negotiated, consideration being given to experienced cost and all other pertinent factors, and the firm target profit is automatically determined in accordance with the formula. At this point, two alternatives are possible. First, a firm fixed price may be negotiated using as a guide the firm target cost plus the firm target profit. Second, if use of the firm fixed price is determined to be inappropriate, a formula for establishing final profit and price may be negotiated, using the firm target profit and the firm target cost. As in the firm target type of contract described in § 1–3.404–4(a)(2), the final cost is negotiated at the completion of the contract and the final contract price is then established in accordance with the formula for establishing final profit and price.

(4) *Billing price.* In either of the types of contract described in (2) and (3) of this § 1–3.404–4(a), a billing price

will be established as an interim basis for payment. This billing price may be adjusted within the ceiling limits, upon request of either party to the contract, when it becomes apparent that final negotiated costs will be substantially different from the target cost.

(b) *Application.* (1) Fixed-price incentive contracts are appropriate when use of the firm fixed-price contract is inappropriate, and the supplies or services being procured are of such a nature that assumption of a degree of cost responsibility by the contractor is likely to provide him with a positive profit incentive for effective cost control and contract performance. It may also be appropriate to negotiate additional incentive provisions covering performance levels and more timely delivery (see § 1–3.407–2). Contract performance requirements must be such that there is reasonable opportunity for the incentive provisions to have a meaningful impact on the manner in which the contractor manages the work.

(2) The firm target type of incentive contract, described in § 1–3.404–4(a)(2), is appropriate for use whenever a firm target and a formula for establishing final profit and price can be negotiated at the outset which will provide a fair and reasonable incentive.

(3) The successive targets type of incentive contract, described in § 1–3.404–4(a)(3), is appropriate for use whenever available cost and pricing information is not sufficient to permit the negotiation of realistic firm targets at the outset. However, enough information should be available to permit negotiation of initial targets, and there should be reasonable assurance that additional reliable information will be available at an early point in the performance of the contract so as to permit negotiation of either a firm fixed price, or firm targets and a formula for establishing final profit and price, which will provide a fair and reasonable incentive. The additional information need not in all cases come from experience under the contract itself, but may be drawn from experience on any other contracts for the same or similar items.

(c) *Limitations.* Fixed-price incentive contracts shall not be used unless the contractor's accounting system is adequate for price revision purposes and permits satisfactory application of the profit and price adjustment formulas. In no case should such contracts be used where (1) cost or pricing information adequate for firm targets is not available at the time of initial contract negotiation or at a very early point in performance, or (2) the sole or principal purpose is to shift substantially all cost responsibility to the Government. In no case shall the firm target profit or the formula for final profit and price be established prior to the negotiation of the firm target cost. Neither type of fixed-price incentive contract shall be used unless a determination has been made, in accordance with the requirements of Subpart 1–3.3, that such method of contracting is likely to be less costly than other methods, or that it is impractical to secure supplies or services of the kind or quality required without the use of such type of contract.

§ 1–3.404–5 Prospective price redetermination at a stated time or times during performance.

(a) *Description.* This type of contract provides for a firm fixed price for an initial period of contract deliveries or performance and for prospective price redetermination either upward or downward at a stated time or times during the performance of the contract. It also may provide for a price ceiling, where appropriate. Once established, ceiling prices are subject to adjustment only by reason of the operation of other contract clauses (see § 1–3.404–1).

(b) *Application.* This type of contract is appropriate in procurements calling for quantity production or services where it is possible to negotiate fair and reasonable firm fixed prices for an initial period, but not for subsequent periods of contract performance. This initial period should be the longest period for which it is possible to establish fair and reasonable firm fixed prices at the time of original negotiation. The length of the prospective pricing periods should depend on the circumstances of each case and should generally be at least twelve months each. Ceiling prices, where appropriate, should be based on the evaluation of the uncertainties involved in contract performance, and their possible impact on cost, and should be negotiated at a level which represents contractor assumption of a reasonable degree of risk.

(c) *Limitations.* This type of contract shall not be used unless:

(1) It has been established through negotiations that a firm fixed-price contract does not fulfill the requirements established by the conditions surrounding the procurement;

(2) The contractor's accounting system is adequate for price redetermination purposes;

(3) The prospective pricing period can be made to conform with the operation of the contractor's accounting system; and

(4) Reasonable assurance exists that price redetermination action will be taken promptly at the time or times specified.

§ 1–3.404–6 [Reserved]

§ 1–3.404–7 Retroactive price redetermination after completion.

(a) *Description.* This type of contract provides for a ceiling price and retroactive price redetermination after completion of the contract. The redetermined price should be negotiated so as to give weight to the management effectiveness and ingenuity exhibited by the contractor during performance, and the basis for such negotiation should be fully discussed with the contractor when this type of contract is negotiated. Because the price is redetermined on a completely retroactive basis, this contract type (except for the price ceiling) does not provide the contractor with a calculable incentive for effective cost control. Once established, the ceiling price is subject to adjustment only if required by the operation of other contract clauses (see § 1–3.404–1).

(b) *Application.* This type of contract is appropriate in procurements where it is established at the time of negotiation that a fair and reasonable firm fixed price cannot be negotiated and the amount involved is so small or the time for performance so short that use of any other type of contract is impracticable. Even in these situations, however, it should be used only after negotiation of a billing price as fair and reasonable as the circumstances of the particular procurement permit. Based on an evaluation of the circumstances involved in contract performance, and their possible impact on cost, the ceiling price should be negotiated at a level which represents contractor assumption of a reasonable degree of risk.

(c) *Limitations.* This type of contract shall not be used unless the procurement is for research and development at an estimated cost of $100,000 or less, and

(1) The contractor's accounting system is adequate for price redetermination purposes;

(2) Reasonable assurance exists that price redetermination action will be taken promptly at the time specified;

(3) A ceiling price is established; and

(4) Written approval has been received from the head of the procuring activity, unless approval at a higher level is required by the agency.

§ 1–3.405 Cost-reimbursement type contracts.

§ 1–3.405–1 General.

(a) *Description.* The cost-reimbursement type of contract provides for payment to the contractor of allowable costs incurred in the performance of the contract, to the extent prescribed in the contract. This type of contract establishes an estimate of total cost for the purpose of obligation of funds, and a ceiling which the contractor may not exceed (except at his own risk) without prior approval or subsequent ratification of the contracting officer.

(b) *Application.* The cost-reimbursement type contract is suitable for use only when the uncertainties involved in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract. In addition, it is essential that (1) the contractor's cost accounting system is adequate for the determination of costs applicable to the contract, and (2) appropriate surveillance by Government personnel during performance will give reasonable assurance that inefficient or wasteful methods are not being used.

(c) *Limitations.* The cost-reimbursement type contract may be used only after a determination, in accordance with Subpart 1–3.3, that:

(1) Such method of contracting is likely to be less costly than other methods; or

(2) It is impractical to secure property or services of the kind or quality required without the use of such type of contract.

§ 1–3.405–2 Cost contract.

(a) *Description.* The cost contract is a cost-reimbursement type contract under which the contractor receives no fee.

(b) *Application.* The following are illustrative situations in which the use of this type of contract may be appropriate:

(1) Research and development work, particularly with nonprofit educational institutions or other non-profit organizations.

(2) Facilities contracts.

(3) Initial small quantity procurements of new items with anticipated subsequent large production runs.

§ 1–3.405–3 Cost-sharing contract.

(a) *Description.* A cost-sharing contract is a cost-reimbursement type contract under which the contractor receives no fee but is reimbursed only for an agreed portion of its allowable costs.

(b) *Application.* A cost-sharing contract is suitable for those procurements which cover production or research projects which are jointly sponsored by the Government and the contractor with benefit to the contractor in lieu of full monetary reimbursement of costs. In consideration of this benefit, the contractor agrees to absorb a portion of the costs of performance. The following are illustrative situations in which this type of contract is generally desirable:

(1) Jointly sponsored research and development work with nonprofit educational institutions or other nonprofit organizations.

(2) Other research and development work where the results of the contract may have commercial benefit to the contractor.

§ 1–3.405–4 Cost-plus-incentive-fee contract.

(a) *Description.* The cost-plus-incentive-fee contract is a cost-reimbursement type contract with provision for a fee which is adjusted by formula in accordance with the relationship which total allowable costs bear to target costs. Under this type of contract, there is negotiated initially a target cost, a target fee, a minimum and maximum fee, and a fee adjustment formula. After performance of the contract, the fee payable to the contractor is determined in accordance with the formula. The formula provides, within limits, for increases in fee above target fee when total allowable costs are less than target costs, and decreases in fee below target fee when total allowable costs exceed target costs. The provision for increase or decrease in the fee is designed to provide an incentive for maximum effort on the part of the contractor to manage the contract effectively.

(b) *Application.* The cost-plus-incentive-fee contract is suitable for use primarily for development and test when a cost-reimbursement type of contract is found necessary in accordance with § 1–3.405–1(b), and when a target and a fee adjustment formula can be negotiated which are likely to provide the contractor with a positive profit incentive for effective management. In particular, where it is highly probable that the development is feasible and the Government generally has determined its desired performance objectives, the cost-plus-incentive-fee contract should be used in conjunction with performance incentives in the development of major systems, and in other development programs where use of the cost and performance incentive approach is considered both desirable and administratively practical (see §§ 1–3.403(c) and 1–3.407–2(b)). Range of fee and the fee adjustment formula should be negotiated so as to give appropriate weight to basic procurement objectives. For example, in an initial product development contract, it may be appropriate to negotiate a cost-plus-incentive-fee contract providing for relatively small increases or decreases in fee tied to the cost incentive feature, balanced by the inclusion of performance incentive provisions providing for significant upward or downward fee adjustment as an incentive for the contractor to meet or surpass negotiated performance targets. Conversely, in subsequent development and test contracts, it may be more appropriate to negotiate an incentive formula where the opportunity to earn additional fee is based primarily on the contractor's success in controlling costs. With regard to the cost incentive provisions of a contract, the minimum and maximum fees, and the fee adjustment formula, should be negotiated so as to provide an incentive which will be effective over variations in costs throughout the full range of reasonably foreseeable variations from target cost. Whenever this type of contract, with or without the inclusion of performance incentives, is negotiated so as to provide incentive up to a high maximum fee, the contract also shall provide for a low minimum fee, which may even be a "zero" fee or, in rare cases, a "negative" fee.

(c) *Limitations.* The maximum fee shall be subject to the limitations stated in § 1–3.405–5(c)(2).

§ 1–3.405–5 Cost-plus-a-fixed-fee contract.

(a) *Description.* The cost-plus-a-fixed-fee contract is a cost reimbursement type of contract which provides for the payment of a fixed fee to the contractor. The fixed fee once negotiated does not vary with actual cost, but may be adjusted as a result of any subsequent changes in the work or services to be performed under the contract. Because the fixed fee does not vary in relation to the contractor's ability to control costs, the cost-plus-a-fixed-fee contract provides the contractor with only a minimum incentive for effective management control of costs.

(b) *Application.* The cost-plus-a-fixed-fee contract is suitable for use when:

(1) A cost-reimbursement type of contract is found necessary in accordance with § 1–3.405–1(b);

(2) The parties agree that the contract should be fee bearing;

(3) The contract is for the performance of research, or preliminary exploration or study, where the level of effort required is unknown; or

(4) The contract is for development and test where the use of a cost-plus-incentive-fee contract is not practical.

(c) *Limitations.* (1) This type of contract normally should not be used in the development of major weapons and equipment, once preliminary exploration and studies have indicated a high degree of probability that the development is feasible and the Government generally has determined its desired performance objectives and schedule of completion (see § 1–3.405–4).

(2) The fixed fees shall not exceed those prescribed by agency procedures within the limitations set forth in the first sentence of section 304(b) of the Act (41 U.S.C. 254(b)), which sentence reads in part as follows:

"* * * in the case of a cost-plus-a-fixed-fee contract the fee shall not exceed 10 per centum of the estimated cost of the contract, exclusive of the fee, as determined by the agency head at the time of entering into such contract (except that a fee not in excess of 15 per centum of such estimated cost is authorized in any such contract for experimental, developmental, or research work and that a fee inclusive of the contractor's costs and not in excess of 6 per centum of the estimated cost, exclusive of fees, as determined by the agency head at the time of entering into the contract, of the project to which such fee is applicable is authorized in contracts for architectural or engineering services relating to any public works or utility project)."

(d) *Contractors' investment in work-in-process.* Contractors having cost-reimbursement type contracts shall be required to maintain a reasonable investment in the property and facilities acquired and in the services rendered in the performance of such contracts. This investment provides a strong incentive for the contractor to strive for greater efficiency and economy and better management, with resultant lower costs to the Government.

(1) In keeping with this policy, cost-reimbursement type contracts other than those set forth below shall provide for interim payment of not to exceed 80 percent of the costs incurred by the contractor in the performance of the contract:

(i) Contracts under which the contractors receive no fee or profit.

(ii) Contracts with educational institutions or nonprofit organizations.

(iii) Contracts solely for the operation of Government-owned plants or vessels.

(iv) Contracts with small business concerns.

(v) Contracts for research and development which do not provide for quantity production.

(vi) Contracts for performance outside the United States, its possessions, and Puerto Rico.

(vii) Contracts having an estimated cost not in excess of $250,000.

(viii) Contracts for construction and architect-engineer services.

(ix) As determined by the agency head concerned, contracts in which the application of the policy would impose undue hardship on the contractor or adversely affect the interests of the Government.

(2) An appropriate clause implementing this policy shall be inserted in all cost-reimbursement type supply contracts.

(3) Application of this policy need not affect the method of payment of the fee, but the extent of the contractor's capital investment in the performance of the contract will be taken into consideration in fixing the amount of fee or profit.

(e) *Completion or Term form.* The cost-plus-fixed-fee contract can be drawn in one of two basic forms, Completion or Term.

(1) The Completion form is one which describes the scope of work to be done as a clearly-defined task or job with a definite goal or target expressed and with a specific end-product required. This form of contract normally requires the contractor to complete and deliver the specified end-product (in certain instances, a final report of research accomplishing the goal or target) as a condition for payment of the entire fixed-fee established for the work and within the estimated cost if possible; however, in the event the work cannot be completed within the estimated cost, the Government can elect to require more work and effort from the contractor without increase in fee provided it increases the estimated cost.

(2) The Term form is one which describes the scope of work to be done in general terms and which obligates the contractor to devote a specified level of effort for a stated period of time for the conduct of research and development. Under this form, the fixed-fee is payable at the termination of the agreed period of time on certification of the contractor that he has exerted the level of effort specified in the contract in performing the work called for, and such performance is considered satisfactory by the Government. Renewals for further periods of performance are new procurement and involve new fee and cost arrangements.

(3) The Completion form of contract, because of differences in obligation assumed by the contractor, is to be preferred over the Term form whenever the work itself or specific milestones can be defined with sufficient precision to permit the development of estimates within which prospective contractors can reasonably be expected to complete the work, as is usually the case in advanced development and engineering development. A milestone is a definable point in a program when certain objectives can be said to have been accomplished.

(4) In the case of research and exploratory development work, it is rarely possible to define the scope of work with the degree of precision necessary for contracting on a Completion basis because of the nature of the work to be performed. Hence in such cases, the Term form of contract may be considered preferable in that it provides more flexibility for effective conduct of the research effort.

(5) In no event should the Term form of contract be used unless the contractor is obligated by the contract to provide a specific level-of-effort within a definite period of time.

§ 1–3.406 Other types of contracts.

§ 1–3.406–1 Time and materials contract.

(a) *Description.* The time and materials type of contract provides for the procurement of property or services on the basis of (1) direct labor hours at specified fixed hourly rates (which rates include direct and indirect labor, overhead, and profit) an (2) material at cost. Material handling costs may be included in the charge for "material at cost," to the extent they are clearly excluded from any factor of the charge computed against direct labor hours. This type of contract does not afford the contractor with any positive profit incentive to control the cost of materials or to manage his labor force effectively.

(b) *Application.* The time and materials contract is used only where it is not possible at the time of placing the contract to estimate the extent or duraion of he work or to anticipate costs with any reasonable degree of confidence. Particular care should be exercised in the use of this type of contract since its nature does not encourage effective management control. Thus it is essential that this type of contract be used only where provision is made for adequate controls, including appropriate surveillance by Government personnel during performance, to give reasonable assurance that inefficient or wasteful methods are not being used. This type of contract may be used in the procurement of (1) engineering and design services in connection with the production of supplies; (2) the engineering, design and manufacture of dies, jigs, fixtures, gauges, and special machine tools; (3) repair, maintenance, or overhaul work; and (4) work to be performed in emergency situations.

(c) *Limitation.* Because this type of contract does not encourage effective cost control and requires almost constant Government surveillance, it may be used only after determination that no other type of contract will suitably serve. This type of contract shall establish a ceiling price which the contractor exceeds at his own risk. The contracting officer shall document the contract file to show valid reasons for any change in the ceiling and to support the amount of such change.

(d) *Optional method of pricing material.* When the nature of the work to be performed requires the contractor to furnish material which is regularly sold to the general public in the normal course of business by the contractor, the contract may provide for charging material on a basis other than at cost if:

(1) The total estimated contract price does not exceed $25,000 or the estimated price of material so charged does not exceed twenty percent of the estimated contract price;

(2) The material to be so charged is identified in the contract;

(3) No element of profit on material so charged is included in the profit in the fixed hourly labor rates; and

(4) The contract provides that the price to be paid for such material shall be on the basis of an established catalog or list price, in effect when material is furnished, less all applicable discounts to the Government, but in no event shall such price be in excess of the contractor's sales price to his most favored customer for the same item in like quantity, or the current market price, whichever is lower.

§ 1–3.406–2 Labor-hour contract.

(a) *Description.* The labor-hour type of contract is a variant of the time and materials type contract differing only in that materials are not supplied by the contractor.

(b) *Application.* See § 1–3.406–1(b).

(c) *Limitations.* See § 1–3.406–1(c).

§ 1–3.407 Additional incentives.

§ 1–3.407–1 General.

In addition to the profit incentives to control costs, inherent in many of the contract types, and combinations thereof, described in §§ 1–3.404 through 1–3.406, there are other means of providing profit incentives to contractors, which are described in this § 1–3.407, to obtain extra management attention and effort. Increases in profits or fees resulting from the use of incentive provisions are made only because cost, performance, or other contractual goals or standards have been surpassed.

§ 1–3.407–2 Contracts with performance incentives.

(a) *Description.* A contract with a performance incentive is one which incorporates an incentive to the contractor to surpass stated performance targets by providing for increases in the fee or profit to the extent that such targets are surpassed and for decreases to the extent that such targets are not met. Salient features and considerations in the use of this type of contract are as follows:

(1) "Performance", as used in this § 1–3.407–2, refers not only to the performance of the article being procured, but to the performance of the contractor as well. Performance which is the minimum which the Government will accept shall be mandatory under the terms of the Completion form contract and shall warrant only the minimum profit or fee related thereto. Performance which meets the stated targets will warrant the "target" profit or fee. Performance which surpasses these targets will be rewarded by additional profit or fee. The incentive feature (providing for increases or decreases, as appropriate) is applied to performance targets rather than performance requirements.

(2) The incentive, when applied to the product, should relate to specific performance characteristics, such as range of a missile, speed of an aircraft or ship, thrust of an engine, maneuverability of a vehicle, and fuel economy. However, high overall performance of the end item is the primary objective of such contracts. Accordingly, the incentive feature should reflect a balancing of the various characteristics which together account for overall performance, so that no one characteristic will be exaggerated to the detriment of the end item as a whole. When applied to the performance of the contractor, the incentive should relate to specific performance areas or milestones, such as delivery or test schedules, quality controls, maintenance requirements, and reliability standards.

(3) Since performance tests generally are essential in order to determine the degree of attainment of performance targets, the contract must be as specific as possible in establishing test criteria, such as conditions of testing, precision of instrumentation, and interpretation of test data.

(4) It is essential that there be explicit agreement between the Government and the contractor as to the effect on performance of contract changes (e.g., pursuant to the Changes clause).

(5) Care must be exercised, in establishing performance criteria, to give recognition to the fact that the contractor should not be rewarded or penalized for attainments of Government-furnished components.

(6) In establishing incentives in connection with delivery schedules, it is important to determine the Government's primary objectives in a given contract. In some instances, earliest possible delivery is of paramount importance. In others, early quantity production is essential. On the other hand, it may be that maintaining an established delivery schedule is all that is desired, and that a bettering of such schedule may disrupt continuity of production or run counter to funding limitations.

(b) *Application.* Contracts with performance incentives are suitable for use in procurements where it is desired to provide the contractor with an incentive in the form of financial reward for surpassing stated performance targets, counterbalanced by a penalty in the form of decreased profit or fee for failure to achieve such targets. Performance incentives are particularly appropriate for inclusion in contracts for major weapons and equipment, both in development when desired performance objectives are known and the fabrication of prototypes for test and evaluation is required, and in production where there is potential for improved performance that would be highly desirable to the Government. Effort always should be made in these procurement situations to include a performance incentive in the contract. Performance incentives present complex problems in contract administration and should be negotiated and administered by contracting officers with the full cooperation of Government engineering and pricing specialists.

(c) *Limitations.* (1) Performance incentives, when related to the performance of the product, may result in increased costs and shall always be coupled with a balancing of range of fee or profit on the cost and performance aspects, negotiated so as to give appropriate weight to basic procurement objectives. Where incentives relating to the performance of the product are included in a contract, and earliest possible delivery is of considerable importance to the Government, the contract normally should include a performance incentive relating to time of performance or for expedited delivery schedules.

(2) In the case of cost-reimbursement type contracts involving a fee, the maximum fee shall be subject to the limitations stated in § 1-3.405-5(c)(2).

§ 1-3.408 Letter contract.

(a) *Definition.* A letter contract is a written preliminary contractual instrument which authorizes immediate commencement of manufacture of property, or performance of services, including, but not limited to, preproduction planning, and the procurement of necessary materials.

(b) *Application.* A letter contract may be entered into when (1) the interests of the Government demand that the contractor be given a binding commitment so that work can be commenced immediately, and (2) negotiation of a definitive contract in sufficient time to meet the procurement need is not possible, as, for example, when the nature of the work involved prevents the preparation of definitive requirements, specifications, or cost data.

(c) *Limitations.* (1) A letter contract shall be used only after a determination in accordance with agency procedures that no other type of contract is suitable.

(2) A letter contract shall not be entered into without competition when competition is practicable. Where a letter contract award is based on price competition, an overall price ceiling shall be included in the letter contract.

(3) A letter contract shall be superseded by a definitive contract at the earliest practicable date. Executive agencies shall prescribe the limitations as to the period of effectiveness of letter contracts.

(4) The maximum liability of the Government stated in the letter contract generally shall not exceed fifty percent of the total estimated cost of the procurement, but this liability may be increased in accordance with agency procedures.

(d) *Content.* Letter contracts shall be specifically negotiated and, as a minimum, shall include agreement as to the following:

(1) The immediate commencement of performance of the contract by the contractor, including procurement of necessary materials;

(2) The extent and method of payments in the event of termination either for the convenience of the Government or for default;

(3) That the contractor is not authorized to expend moneys or incur obligations in excess of the maximum liability of the Government as stated in the letter contract;

(4) The type of definitive contract anticipated;

(5) As many definitive contract provisions as possible;

(6) The contractor's obligation to provide such price and cost information as may reasonably be required by the contracting officer; and

(7) The prompt entry into good faith negotiations by the contractor and the Government to reach agreement upon and execute a definitive contract.

§ 1-3.409 Indefinite delivery type contracts.

One of the following indefinite delivery type contracts may be used for procurements where the exact time of delivery is not known at time of contracting.

(a) *Definite quantity contract*—(1) *Description.* This type of contract provides for a definite quantity of specified property or for the performance of specified services for a fixed period, with deliveries or performance at designated locations upon order. Depending on the situation, the contract may provide for (i) firm fixed-prices, (ii) price escalation, or (iii) price redetermination.

(2) *Application.* This type of contract is particularly suitable for use where it is known in advance that a definite quantity of property or services will be required during a specific period and are regularly available or will be available after a short lead time. Advantages of this type of contract are that it permits stocks in storage depots to be maintained at minimum levels and permits direct shipment to the user.

(b) *Requirements contract*—(1) *Description.* This type of contract provides for filling all actual purchase requirements of specific property or services of designated activities during a specified contract period with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. Depending on the situation, the contract may provide for (i) firm fixed-prices, (ii) price escalation, or (iii) price redetermination. An estimated total quantity is stated for the information of prospective contractors, which estimate should be as realistic as possible. The estimate may be obtained from the records of previous requirements and consumption, or by other means. Care should be used in writing and administering this type of contract to avoid imposition of an impossible burden on the contractor. Therefore, the contract shall state, where feasible, the maximum limit of the contractor's obligation to deliver and, in such event, shall also contain appropriate provision limiting the Government's obligation to order. When large individual orders or orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered.

(2) *Application.* A requirements contract may be used for procurements where it is impossible to determine in advance the precise quantities of the property or services that will be needed by designated activities during a definite period of time. Advantages of this type of contract are:

(i) Flexibility with respect to both quantities and delivery scheduling;

(ii) Supplies or services need be ordered only after actual needs have materialized;

(iii) Where production lead time is involved, deliveries may be made more promptly because the contractor is usually willing to maintain limited stocks in view of the Government's commitment;

(iv) Price advantages or savings may be realized through combining several

anticipated requirements into one quantity procurement; and

(v) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

Generally, the requirements contract is appropriate for use when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

(c) *Indefinite quantity contract*—(1) *Description.* This type of contract provides for the furnishing of an indefinite quantity, within stated limits, of specific property or services, during a specified contract period, with deliveries to be scheduled by the timely placement of orders upon the contractor by activities designated either specifically or by class. Depending on the situation, the contract may provide for (i) firm fixed-prices, (ii) price escalation, or (iii) price redetermination. The contract shall provide that during the contract period the Government shall order a stated minimum quantity of the property or services and that the contractor shall furnish such stated minimum and, if and as ordered, any additional quantities not exceeding a stated maximum which should be as realistic as possible. The maximum may be obtained from the records of previous requirements and consumption, or by other means. When large individual orders or orders from more than one activity are anticipated, the contract may specify the maximum quantities which may be ordered under each individual order or during a specified period of time. Similarly, when small orders are anticipated, the contract may specify the minimum quantities to be ordered.

(2) *Application.* An indefinite quantity contract may be used where it is impossible to determine in advance the precise quantities of the property or services that will be needed by designated activities during a definite period of time and it is not advisable for the Government to commit itself for more than a minimum quantity. Advantages of this type of contract are:

(i) Flexibility with respect to both quantities and delivery scheduling;

(ii) Property or services need be ordered only after actual needs have materialized;

(iii) The obligation of the Government is limited; and

(iv) It permits stocks to be maintained at minimum levels and allows direct shipment to the user.

The indefinite quantity contract should be used only when the item or service is commercial or modified commercial in type and when a recurring need is anticipated.

§ 1–3.410 Other types of agreements.

§ 1–3.410–1 Basic agreement.

(a) *Description.* A basic agreement is a written instrument of understanding executed between a procuring agency and a contractor which sets forth the negotiated contract clauses which shall be applicable to future procurements entered into between the parties during the term of the basic agreement. The use of the basic agreement contemplates the coverage of a particular procurement by the execution of a formal contractual document which will provide for the scope of the work, price, delivery, and additional matters peculiar to the requirement of the specific procurement involved, and shall incorporate by reference or append the contract clauses agreed upon in the basic agreement, as required or applicable.

(b) *Application.* (1) Basic agreements are appropriate for use when (i) past experience and future plans indicate that a substantial number of separate contracts may be entered into with a contractor during the term of the basic agreement, and (ii) substantial recurring negotiating problems exist with a particular contractor.

(2) A basic agreement shall be amended only by an amendment of the basic agreement itself and shall not be modified or superseded by individual contracts or purchase orders entered into under and subject to the terms of such basic agreement. As a minimum, basic agreements will be reviewed annually on the anniversary of their effective date and revised at that time to conform with the current requirements of this chapter. Amendments shall not have retroactive effect.

(3) Basic agreements shall provide for discontinuance of their future application upon 30 days written notice by either party. Discontinuance of a basic agreement will not affect any individual contract referencing the basic agreement (or the clauses appended thereto) entered into prior to the effective date of discontinuance.

(c) *Limitations.* (1) Basic agreements shall neither cite appropriations to be charged nor be used alone for the purpose of obligating funds.

(2) Basic agreements shall not in any manner provide for or imply any agreement on the part of the Government to place future orders or contracts with the contractor involved. Basic agreements shall not be used in any manner to restrict competition.

(3) Basic agreements generally shall be utilized only in connection with negotiated contracts.

§ 1–3.410–2 Basic ordering agreement.

(a) *Description.* A basic ordering agreement is an agreement which is similar to a basic agreement (see § 1–3.410–1) except that it also includes a description, as specific as practicable, of the supplies to be furnished or services to be performed when ordered and a description of the method for determination of the prices, consistent with the contract types authorized by this subpart, to be paid to the contractor for such supplies or services. Either the specific terms and conditions of delivery or a description of the method for their determination shall be set forth in the basic ordering agreement. The basic ordering agreement shall list one or more activities which are authorized to issue orders under the agreement. Any activity so named may issue orders specifying the supplies or services required, which orders may be accepted by the contractor by whatever manner of acceptance is indicated in the basic ordering agreement. Each order will incorporate by reference the provisions of the basic ordering agreement.

(b) *Application.* The basic ordering agreement may be used as a means of expediting procurement where specific items, quantities, and prices are not known at the time of execution of the agreement but where past experience or future plans indicate that a substantial number of requirements for items or services of the type covered by the basic ordering agreement will result in procurements from the contractor during the term of the agreement. Under proper circumstances, use of the procedures under the agreement is advantageous and economical in ordering parts for equipment support since such procedures substantially shorten the administrative time required for placing such articles in a production status, thereby not only decreasing the amount of support inventory required to be carried but also decreasing the possibility that parts procured will become obsolete as a result of design changes in the equipment.

(c) *Limitations.* (1) Supplies or services may be ordered under a basic ordering agreement only if it is determined at the time the order is placed that it is impracticable to obtain competition by either formal advertising or negotiation for such supplies or services.

(2) The Government shall neither make any final commitment nor authorize any work by the contractor pursuant to an order under a basic ordering agreement until prices have been established, unless the order establishes a monetary limitation on the obligation of the Government and either—

(i) The order is subject to provisions contained in the basic ordering agreement which set forth adequate procedures for arriving at prices as early in contract performance as practical, but in no event shall such procedures permit the price of the entire order to be established on a retroactive basis (however, incentive provisions consistent with this Subpart 1–3.4 are permitted); or

(ii) The need for the supplies or services is compelling and of unusual urgency, as when the Government would be seriously injured, financially or otherwise, if the supplies or services were not furnished by a certain date and when they could not be furnished by that date if the contractor is not allowed to proceed with work until prices have been established.

As a general rule, prices should be established prior to authorizing the contractor to begin work. However, where the contractor is allowed to begin work prior to pricing in accordance with this paragraph, the contractor and the contracting officer shall proceed with pricing as soon as practicable. The basic ordering agreement shall provide that failure to reach agreement on price in such circumstances will constitute a dispute subject to the procedures of the Disputes clause.

(3) Each order issued under a basic ordering agreement shall be subject to

such reviews, approvals, and determinations and findings (including those pertaining to types of contracts) specified in this Part 1-3 as would be applicable if the order were a contract entered into apart from the basic ordering agreement.

(4) A basic ordering agreement shall be modified only by a revision of the basic ordering agreement itself and shall not be modified or superseded by individual orders issued thereunder. Basic ordering agreements shall be reviewed at least annually, before the anniversary of their effective dates, and revised to conform with the current requirements of this Part 1-3. Modifications shall not have retroactive effect.

(5) The contracting officer issuing an order under a basic ordering agreement shall be responsible for assuring compliance with the provisions of (1), (2), and (3) of this § 1-3.410-2(c).

Subpart 1-3.5—[Reserved]

Subpart 1-3.6—Small Purchases

§ 1-3.600 Scope of subpart.

This subpart prescribes policies and procedures for the purchasing of supplies and nonpersonal services from commercial sources when the aggregate amount involved in any one transaction does not exceed $2,500. Such purchases shall be termed "small purchases." This subpart is not applicable to the procurement of supplies and services initially estimated to exceed $2,500 even though awards under such procurements do not exceed $2,500.

§ 1-3.601 Purpose.

The objectives of the simplified purchase methods prescribed herein are to reduce the administrative costs in accomplishing small purchases, to improve opportunities for small business concerns to obtain a fair proportion of Government purchases and contracts, and to eliminate costly and time consuming paper processes.

§ 1-3.602 Policy.

(a) Small purchases shall be made by negotiation (see § 1-3.203), except under special circumstances where it is clearly in the best interest of the Government to accomplish such purchases by more formal methods.

(b) The objective of helping small concerns to participate in Government contracting has wide potential application where small purchases are concerned, and accordingly, placement of small purchases with small concerns is specifically encouraged, consistent, of course, with other valid considerations such as price feasibility.

(c) When quotations are received on a number of related items (such as hardware items, spare parts for vehicles, or office supplies, etc.), one purchase order shall normally be issued to the firm quoting the lowest aggregate prices rather than issuing more than one purchase order on the basis of the lowest quotation on each item.

(d) In arriving at the aggregate amount involved in any one transaction, there must be included all supplies and services which would properly be grouped together in a single transaction and which would be included in a single advertisement for bids if the procurement were being effected by formal advertising. Requirements aggregating more than $2,500 shall not be broken down into several purchases which are less than $2,500 merely for the purpose of permitting negotiation or utilizing the small purchase methods authorized under this Subpart 1-3.6.

(e) Any one of the purchase methods set forth in this subpart which is determined the most suitable to the immediate requirement and which will accomplish the procurement in the most efficient and economical manner, shall be utilized.

§ 1-3.603 Competition.

§ 1-3.603-1 Solicitation.

(a) Reasonable competition shall be obtained in making small purchases. As used in this § 1-3.603, reasonable competition means obtaining a sufficient number of quotations from qualified sources of supply to assure that the procurement is fair to the Government, price and other factors considered, including the administrative cost of the purchase. In arriving at the number of quotations to be solicited, due consideration will be given to the cost of the proposed solicitation in relation to the potential benefits to be derived by the Government, consistent with good business.

(b) Reasonable competition for small purchases ordinarily can be obtained without soliciting quotations from sources outside the trade area in which the procurement office is located. However, solicitation shall not be limited to suppliers of well-known and widely distributed makes or brands, nor shall quotations be solicited purely on a selective personal preference basis. New supply sources, disclosed through trade journals or other media, shall be continuously reviewed and, when appropriate, added to the list of available sources.

(c) The following factors influence the number of quotations required in connection with any particular purchase:

(1) The nature of the article or service to be procured, and whether highly competitive and readily available in several makes or brands, or relatively noncompetitive.

(2) Information obtained in making recent purchases of the same or similar item.

(3) The urgency of the proposed purchase.

(4) The dollar value of the proposed purchase.

(5) Past experience concerning specific dealers' prices.

(d) Solicitation of quotations may be effected orally or in writing. Written solicitation should be used only in such circumstances as where (1) the suppliers are located outside the local area, (2) special specifications are involved, (3) a large number of items are included in a single proposed procurement, or (4) obtaining oral quotations is not considered efficient. Standard Form 18, Request for Quotations, shall be used for written solicitation of quotations in accordance with § 1-16.201.

(e) Where it is the practice for suppliers to furnish standing price quotations on supplies or services required on an intermittent and recurring basis, this information may be used in lieu of obtaining individual quotations each time a purchase is contemplated. In such cases, the purchaser shall assure that the price information is current and that the Government obtains the benefit of maximum discounts.

§ 1-3.603-2 Data to support small purchases.

(a) The manner of securing quotations, and the nature and extent of information to be required for small purchases, are for determination by the procuring agency, but should be limited to only that deemed necessary to conclude purchase action.

(b) The following are illustrative of the extent to which quotation information should be recorded:

(1) *Oral solicitations.* When oral price quotations are obtained, informal records should be established which will reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each. Handwritten notations on the purchase action request form of the agency, or whatever medium the purchaser is using as his basis for making the purchase, are satisfactory for this purpose.

(2) *Written solicitations.* Retention in the purchase files of written quotations received, or references to printed price lists used, will usually suffice as the record supporting the price paid.

(c) Purchase data collected or compiled during the course of arranging the purchase are for administrative and guidance value in making the purchase and issuing the appropriate purchase document. The retention of such data in the purchase files for use in subsequent reference, or as administratively required by agencies for management review, should be limited in time and quantity to the minimum necessary for such use.

(d) This § 1-3.603-2 is not to be construed as modifying the requirements of applicable regulations relating to the retention of records.

§ 1-3.604 Imprest funds (petty cash) method.

§ 1-3.604-1 General.

This § 1-3.604 prescribes policies and procedures for making small purchases of supplies and nonpersonal services through the use of imprest funds. Related policies and regulations concerning bonding requirements and the establishment of, and accounting for, imprest funds are contained in Treasury Department Circular Nos. 1030 and 969, and GAO Manual 7 GAO 2700 and 5120.

§ 1-3.604-2 Definition of imprest fund.

The term "imprest fund" means a fixed cash or petty cash fund in the form of currency, coin, or Government check which has been advanced by an official Government disbursing office, without charge to a Government appropriation or fund account, to a duly authorized cashier for cash payment or other cash requirement purposes as specified in his designation or authorization. The fund may be of a revolving type, replenished to a fixed amount as spent or used, or of a stationary nature such as a change making fund.

§ 1-3.604-3 Agency responsibilities.

Each agency using imprest funds for small cash purchases of supplies or nonpersonal services shall have the responsibility of periodically reviewing and determining whether there is continuing need for each fund established, and that amounts of such funds are not in excess of actual needs. Agencies should take prompt action to have imprest funds adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action. In this connection, each agency shall:

(a) Study agency practices to insure that full advantage is taken of all small purchase processes; and

(b) Develop and issue appropriate implementing regulations.

§ 1-3.604-4 Use of imprest funds.

(a) The cash payment processes described in this section should be used for making small purchases whenever advantageous to the Government. Cash purchases will generally be advantageous in the following circumstances:

(1) When vendors are reluctant to honor small purchase orders.

(2) When vendors are not equipped to bill agencies for purchases in accordance with normal business practices.

(3) When supplies or nonpersonal services are needed at locations not served by purchase offices or when the established sources of issue are not conveniently accessible to point of use.

(4) When provisions for local credit arrangements and monthly billings by vendors are impracticable.

(b) The following are typical procurements for which the use of imprest funds would be suitable:

(1) Emergency, fill-in, occasional, or special purchases of supplies or services.

(2) Repair of equipment.

(3) Perishable subsistence.

(4) Public utility bills where location of the activity is so situated as to make cash payment more efficient.

(5) Postage stamps, parcel post, COD, postal charges, local drayage, transportation tokens or passes (including cash fares), and taxi fares.

(6) Expenses incident to travel and emergency travel advances (as specified in Treasury Department Circular No. 1030).

§ 1-3.604-5 Limitations.

(a) Small purchases made pursuant to imprest fund procedures may not exceed $100 for any one transaction, except that under emergency conditions the amount for any one transaction may be increased not to exceed $250. Exceptions or additions needed in connection with procurement matters described in § 1-3.604-4, as well as the maximum dollar limitation for any one procurement transaction, should be addressed to the Treasury Department (pursuant to Treasury Department Circular No. 1030). The granting of any such exceptions or additions will be coordinated with the Administrator of General Services or his designee. Approved exceptions now existing will automatically be continued without specific request from the agency to which exceptions have been granted.

(b) Supplies or services subject to restrictions under any provision of law or regulation may not be purchased through use of imprest funds except under conditions which fully comply with such statutory and regulatory restrictions.

§ 1-3.604-6 Procurement and payment.

(a) Small purchases utilizing imprest funds may be made only by authorized employees.

(b) When payment for small purchases is made from imprest funds, no purchase order need be issued unless it is advantageous to the Government, for example, when required by the vendor to grant Government discounts. When so required, any authorized purchase order form may be used and will be endorsed "payment to be made in cash."

(c) Receipts must be secured for each payment from imprest funds (pursuant to the provisions of GAO Manual 7 GAO 5120).

(d) The cashier may either reimburse employees for amounts paid by them for authorized purchases or furnish the cash necessary to consummate such purchases. Purchases for which cash has been furnished in advance should be confirmed within five work days from the date of advance.

§ 1-3.604-7 Tax exemption certificates.

Government tax exemption certificates (Standard Form 1094-Revised) will not be required unless the amount of the taxes on any one bill or purchase exceeds one dollar. (See GAO Manual of Policies and Procedures, Title 7, section 4820.10.)

§ 1-3.605 Purchase order forms.

§ 1-3.605-1 Standard Form 44, Purchase Order-Invoice-Voucher.

(a) *Purpose of the form.* Standard Form 44, Purchase Order-Invoice-Voucher (illustrated in § 1-16.901-44), is a pocket-size purchase order form designed primarily for on-the-spot over-the-counter purchases of supplies and

nonpersonal services. It is a multi-purpose form which can be used as a purchase order, receiving report, invoice, and public voucher.

(b) *Prescribed use.* Standard Form 44 is prescribed for use in connection with the documenation of purchases when all of the following conditions are satisfied:

(1) Except for purchases made under public exigency circumstances, the amount of the purchase is not in excess of $2,500.

(2) The supplies or services are immediately available.

(3) One delivery and one payment will be made.

(4) Its use is determined to be more economical and efficient than use of other small purchase methods.

(c) *Terms and conditions.* There are no written terms and conditions included on Standard Form 44. Since there is, for all practical purposes, simultaneous placing of purchase orders on Standard Form 44 and delivery of the items ordered, written terms and conditions are not considered necessary.

(d) *Instructions for use.* General procedural instructions governing the use of Standard Form 44 are printed on the form and on the inside front cover of each book of forms.

(e) *Agency implementation.* Agency implementation shall be consistent with this § 1-3.605-1, and shall provide adequate safeguards regarding the control of forms and accounting for purchases.

(f) *Description and availability of form.* (1) Standard Form 44 is available from General Services Administration supply depots in four-part carbon interleaved sets made up into books, consisting of twenty-five sets per book. Each set of forms consists of the following copies: Seller's Invoice, Seller's Copy of Order, Receiving Report—Accounting Copy, and Memorandum Copy. Standard Form 44 may be ordered in the same manner as other standard forms, or the form may be ordered specially printed in accordance with paragraph (f)(2) of this § 1-3.605-1.

(2) Standard Form 44 may be ordered specially printed (i) to include agency name, address, and serial numbers; and (ii) on special weight of paper and with the type of construction, number of sets per book, and number of parts per set, as specified by the ordering agency. Also, the administrative instructions on the inside front cover of the books may be supplemented by using agencies. However, the format of Standard Form 44 may not be changed unless otherwise authorized by the General Services Administration.

§ 1-3.605-2 Standard Forms 147 and 148, Order for Supplies or Services.

(a) *General.* (1) Standard Form 147, Order for Supplies or Services (illustrated in § 1-16.901-147) and Standard Form 148, Continuation Sheet (illustrated in § 1-16.901-148), are multi-purpose forms designed for use as a purchase order, delivery order, receiving and inspection report, and invoice.

(2) Standard Forms 147 and 148 are available for use by all Federal agencies and shall be used when in the judgment of the agency concerned the use of such forms is considered economical and efficient.

(3) Standard Form 147 is designed primarily for use as:

(i) A purchase order for small purchases not in excess of $2,500.

(ii) A delivery order for ordering or scheduling deliveries against established contracts or from Government sources of supply.

(b) *Terms and conditions.* (1) Terms and conditions generally suitable for most small purchases are printed on the reverse of Standard Form 147.

(2) Additional terms and conditions, which are consistent with those printed on the form, may be added by agencies provided they are designated as agency terms and conditions, and not as standard terms and conditions of Standard Form 147.

(c) *Description and availability of forms.* (1) Standard Forms 147 and 148 are available from General Services Administration supply depots in carbon interleaved sets of six parts and may be ordered in the same manner as other standard forms, or the forms may be ordered specially printed in accordance with paragraph (c)(2) of this § 1-3.605-2.

(2) Standard Forms 147 and 148 may be ordered specially printed (i) to include agency name, address, and serial numbers; and (ii) on special weight of paper and with the type of construction, and number of copies per set, as specified by the ordering agency. The forms may be made up as snap-out manifold forms, cut sheets, or reproducible masters. However, the format of Standard Forms 147 and 148 may not be changed unless authorized by the General Services Administration.

§ 1-3.605-3 Agency order forms.

Where Standard Forms 147 and 148 are not used, order forms designed by executive agencies shall conform insofar as practicable with the form illustrated in § 1-16.901-147.

§ 1-3.606 Blanket purchase arrangements.

§ 1-3.606-1 General.

This section establishes policy relating to the purchase of day-to-day requirements through arrangements with vendors or dealers to furnish, on a "charge account" basis, such supplies or nonpersonal services as the Government may order from such sources during a stated period of time. Generally, these arrangements should be made only with local sources so that individual purchases thereunder can be effected with a minimum of time and paper work. In addition to making blanket purchase arrangements for small purchases, similar blanket purchase accounts may be established with Federal Supply Schedule contractors, if not inconsistent or at variance with the terms of the applicable Federal Supply Schedule Contract.

§ 1-3.606-2 Authority to use blanket purchase arrangements.

(a) Blanket purchase arrangements are authorized when:

(1) A wide variety of items in a broad class of goods, like hardware, are generally purchased from local suppliers but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) There is a need to provide local commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) In any other case where the writing of numerous purchase orders can be avoided through the use of this procedure.

(b) Blanket purchase arrangements should be made with local firms from whom numerous individual purchases will likely be made in a given period. For example, where past experience has shown that certain commercial firms selling supplies in a local area are dependable and consistently lower in price than other supply firms in the area dealing in the same commodities, and numerous small purchases are usually made from such suppliers, it would be advantageous to establish blanket purchase arrangements with these firms.

(c) There is no prohibition against making these arrangements with several suppliers for the same class or classes of items. Where experience indicates that prices vary between suppliers, it is preferable to have several blanket purchase arrangements so that delivery orders can be placed with the firm offering the best price.

§ 1-3.606-3 Establishment of account.

If it is determined that blanket purchase arrangements with certain suppliers would be advantageous, such suppliers should be contacted, preferably in person or through correspondence, in order to make the necessary arrangements with respect to securing maximum discounts, documenting the individual purchase transactions, periodic billing, and other necessary details.

§ 1-3.606-4 Documentation.

(a) Any documentation that assures the following with respect to individual purchase transactions is permissible:

(1) That the vendor and purchaser are in agreement as to what is being purchased.

(2) That at the time of delivery a record of sale and receipt is created.

(3) That at the time of billing for payment the foregoing requirements have provided evidence of the items, quantity, price, date sold and other relevant data.

(b) The issuance of a formal purchase order to document blanket purchase arrangements may be necessary only in certain instances. Such instances may be: when required by the vendor for administrative or tax exemption purposes; when administratively deemed necessary in the best interests of the Government by an agency; or when it is necessary to fix the extent of items covered, quantity, prices, expenditure authorized, activities participating, or otherwise identify or isolate areas of the arrangement. The issuance of a purchase order for Government purchasing or accounting reasons alone is not necessary.

(1) Purchase orders establishing blanket purchase arrangements, when required, may be general and broad in language with only sufficient detail to indicate the general nature of supplies or services to be covered, and may or may not, as the need dictates, be specific as to quantity, quality, specifications, or time limitation. The blanket purchase orders may be issued on any authorized purchase order form. Individual blanket purchase orders terminate when the purchases thereunder total the dollar amount limitation or when the stated time period expires.

(2) In any contemplated amendment of a blanket purchase order, due consideration should be given to possible changes in market conditions, sources of supply, etc., which may warrant placing a new order with the same or a different source in preference to amendment.

§ 1–3.606–5 Agency implementation.

The following general instructions are set forth for agency use in the issuance of administrative regulations implementing this policy:

(a) The vendor-agency relationship is that of an open account limited only by the maximum amount and time period limitations fixed by that agency.

(b) The vendor-agency arrangement may be limited to furnishing individual items, or commodity groups or classes, or it may be unlimited for all items or services that the source of supply is in a position to furnish.

(c) The requirements of one or more activities, offices, or projects in a geographical area may be secured by this means.

(d) Authority and responsibility for effecting blanket purchase arrangements should be delegated by agencies to the lowest agency level to which the responsibility is placed or assigned for providing supplies for its own operations or to other offices, installations, projects, or functions. Such levels may be organized supply points, separate independent or detached field parties, or one-man posts or activities.

(e) The use of blanket purchase arrangements does not exempt the agency from responsibility for keeping obligations and expenditures within available funds, but this should be accomplished by the use of simplified methods and by avoiding formal fiscal recordation of individual deliveries and transactions under blanket purchase arrangements.

(f) The use of a blanket purchase arrangement does not authorize purchases not otherwise authorized by law or regulation. For example, the blanket purchase arrangement, being a method of simplifying the making of individual small purchases, may not be used to avoid the $2,500 limitation.

(g) The blanket purchase arrangement method is primarily designed to reduce the amount of documentation in connection with small purchases. The same policies as to selection of suppliers on the basis of price, time discounts, quality of merchandise, and responsibility of suppliers pertain to blanket purchase arrangements and purchases thereunder as to purchases made by other approved methods. Individual purchases under blanket purchase arrangements should be made only after making price comparisons with other sources available to the extent practicable, consistent with the size and nature of the purchase involved.

(h) Constant consideration should be given to possible changes in market conditions, sources of supply, and other pertinent factors which may warrant making new arrangements with different dealers or vendors, or modifying existing arrangements.

§ 1–3.607 Interagency use of local term contracts.

(a) *General.* This § 1–3.607 provides for the cooperative use by the field office of one executive agency of the local term contracts of another agency, or of another office of the same agency, under the circumstances outlined, and establishes criteria for local term contracting by an agency for the combined needs of several agency offices in the area. These contracts provide a means of meeting the local requirements for supplies and services not available from normal agency internal supply channels or other prescribed sources of supply. All Federal agencies are urged to participate in this program.

(b) *General conditions warranting use.* The use of term contracts usually will be found expedient and economical under any or all of the following conditions:

(1) When the day-to-day requirements for the supply or service are continuing or recurring.

(2) When the probable total requirements only are known and it is expedient and economical to have a source of supply and price determined in advance of the individual instances of actual need.

(3) When this method best meets the needs for providing ordering offices with ready sources of supply.

(c) *Use of existing contracts.* In lieu of entering into a separate contract for an item covered by a local term contract of another office or agency, use of the term contract should be considered under any one of the following circumstances, if such use is approved by the contracting office and if the contract permits (or is amended to permit) such use:

(1) When such use will obviate the administrative expense and time delay incident to making a separate contract.

(2) When there is a price advantage to be gained, freight and other costs considered.

(3) When the requiring office has local purchasing authority but is not staffed or authorized to execute contracts.

(d) *Multiple use contracts.* In furtherance of the economical and other advantages to be gained from cross utilization of local term contracts, wherever possible the requirements of several offices in the same community should be combined and included in a single contract:

(1) When there is a local repetitive need for a particular article or service by the individual agencies;

(2) When an advantage accrues to requiring offices or activities through establishment of such contracts; and

(3) When it is expedient and practical for a single office to perform the contracting function for other offices, delivery or performance under the contract being arranged for by the participating offices as required.

(e) *Selection of contracting agency.* The following criteria usually will determine which of the agency offices in any given area having a common need for a given article or service should assume the responsibility for contracting for the requirements of the group in addition to its own needs:

(1) Current or potential preponderant use or consumption.

(2) Actual or potential qualifications and experience of contracting personnel, with due regard to adequacy of staff.

(3) Physical location of the contracting office in relation to market area serving the agencies.

(4) Consideration of the bid prices consistently received for a given article or service by individual contracting offices.

(f) *Responsibilities of contracting office and participating offices.* The responsibilities of the contracting agency and of the other participating offices with respect to common local term contracts, except where other arrangements have been made, normally will be:

(1) *Contracting office.* (i) Arranging with participating offices for submission of estimated requirements.

(ii) Soliciting and analyzing bids and awarding and executing contracts.

(iii) Exercising general contract administration, except followup and expediting.

(iv) Making available to the participating office such contract data as is required for placing orders, payment of invoices, etc.

(2) *Other participating offices.* (i) Placing of orders directly with contractor.

(ii) Arranging for inspection and acceptance.

(iii) Arranging for billing and paying the contractor.

Subpart 1–3.7—[Reserved]

Subpart 1–3.8—Price Negotiation Policies and Techniques

§ 1–3.800 Scope of subpart.

This subpart sets forth the price negotiation policies and techniques applicable to negotiated prime contracts and those subcontracts which are subject to approval or review within an agency. The principles in this subpart apply to negotiation of prices on all type of contracts and to revised prices as well as initial prices.

§ 1–3.801 Basic policy.

(a) *General.* It is the policy of the Government to procure property and services from responsible sources at fair and reasonable prices calculated to result in the lowest ultimate overall cost to the Government. Sound pricing depends primarily upon the exercise of sound judgment by all personnel concerned with the procurement.

(b) *Responsibility of contracting officers.* (1) Contracting officers, acting within the scope of their appointments (and in some cases acting through their authorized representatives) are the exclusive agents of their respective agencies to enter into and administer contracts on behalf of the Government in accordance with agency procedures. Each contracting officer is responsible for performing or having performed all administrative actions necessary for effective contracting. The contracting officer shall exercise reasonable care, skill, and judgment and shall avail himself of all of the organizational tools (such as the advice of specialists in the fields of contracting, finance, law, contract audit, engineering, traffic management, and cost analysis) necessary to accomplish the purpose as, in his discretion, will best serve the interests of the Government.

(2) To the extent services of specialists are utilized in the negotiation of contracts, the contracting officer must coordinate a team of experts, requesting advice from them, evaluating their counsel, and availing himself of their skills as much as possible. The contracting officer shall obtain simultaneous coordination of the specialist efforts to the greatest practical extent. He shall not, however, transfer his own responsibilities to them. Thus, the final negotiation of price, including price redetermination and evaluation of cost estimates, remains the responsibility of the contracting officer.

(c) *Responsibility of other personnel.* Personnel, other than the contracting officer, who determine quality, quantity, and delivery requirements for items to be purchased, can influence the degree of competition obtainable as well as have a material effect upon prices. Failure to finalize requirements in sufficient time to allow:

(1) A reasonable period for preparation of requests for proposals;

(2) Preparation of quotations by offerors;

(3) Contract negotiation and preparation; and

(4) Adequate manufacturing lead time;

causes delinquency in delivery and uneconomical prices. Requirements issued on an urgent basis or with unrealistic delivery schedules should be avoided since they generally increase price or restrict desired competition. Personnel determining requirements, specifications, adequacy of sources of supply, and like matters have responsibility in such areas, equal to that of the contracting officer, for timely, sound, and economical procurement.

§ 1–3.802 Preparation for negotiation.

(a) *Product or service.* Knowledge of the product or service, and its use, is essential to sound pricing. Before soliciting quotations, every contracting officer should develop, where feasible, an estimate of the proper price level or value of the product or service to be purchased. Such estimates may be based on a physical inspection of the product and review of such items as drawings, specifications, job process sheets, and prior procurement data. When necessary, requirements and technical specialists should be consulted. The primary responsibility for the adequacy of specifications and for the delivery requirements must necessarily rest with requirements and technical groups. However, the contracting officer should be aware of the effect which these factors may have on prices and competition, and should, prior to award, inform requirements and technical groups of any unsatisfactory effect which their decisions have on prices or competition.

(b) *Selection of prospective sources.* Selection of qualified sources for solicitation of proposals is basic to sound pricing. Proposals should be invited from a sufficient number of competent potential sources to insure adequate competition (see §§ 1–1.302, 1–1.310–4, 1–1.702, and 1–3.101). The bidders mailing lists prescribed by § 1–2.205 should be used where appropriate.

(c) *Requests for proposals.* Requests for proposals shall contain the information necessary to enable a prospective offeror to prepare a quotation properly. The request for proposals shall be as complete as possible with respect to: item description or statement of work; specifications; Government-furnished property, if any; required delivery schedule; and contract clauses. If a price breakdown is required, the request for proposals shall so state. Requests for proposals shall specify a date for submission of proposals; any extension of time granted to one prospective offeror shall be granted uniformly to all. Each request for proposals shall be released to all prospective offerors at the same time and no offeror shall be given the advantage of advance knowledge that proposals are to be requested. Generally, requests for proposals shall be in writing. However, in appropriate cases, such as the procurement of perishable subsistence, oral requests for quotations are authorized.

§ 1–3.803 Type of contract.

(a) The selection of an appropriate contract type and the negotiation of prices are related and should be considered together. Section 1–3.403 lists some of the factors for this joint consideration. The objective is to negotiate a contract type and price that includes reasonable contractor risk and provides the contractor with the greatest incentive for efficient and economical performance. When negotiations indicate the need for using other than a firm fixed price contract, there should be compatibility between the type of contract selected and the contractor's accounting system.

(b) In the course of a procurement program, a series of contracts, or a single contract running for a lengthy term, the circumstances which make for a selection of a given type of contract at the outset will frequently change so as to make a different type more appropriate during later periods. In particular, the repetitive or unduly protracted use of cost-reimbursement type or time and materials contracts is to be avoided where experience has provided a basis for firmer pricing which will promote efficient performance and will place a more reasonable degree of risk on the contractor. Thus, in the case of a time and materials contract, continuing consideration should be given to converting to another type of contract as early in the performance period as practicable.

§ 1–3.804 Conduct of negotiations.

Evaluation of offerors' or contractors' proposals, including price revision proposals, by all personnel concerned with the procurement, as well as subsequent negotiations with the offeror or contractor, shall be completed expeditiously. Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations. Oral discussions or written communications shall be conducted with offerors to the extent necessary to resolve uncertainties relating to the purchase or the price to be paid. Basic questions should not be left for later agreement during price revision or other supplemental proceedings. Cost and profit figures of one offeror or contractor shall not be revealed to other offerors or contractors.

§ 1–3.805 Selection of offerors for negotiation and award.

§ 1–3.805–1 General.

The procedures set forth in this § 1–3.805–1 are generally applicable to negotiated procurement. However, they are not applicable where their use would be inappropriate, as may be the case, for example, when procuring research and development or special services (such as architect-engineer services) or when cost-reimbursement type contracting is anticipated (see § 1–3.805–2). While the lowest price or lowest cost to the Government is properly the deciding factor in source selection in many instances, award of a contract properly may be influenced by the proposal which promises the greatest value to the Government in terms of possible performance, ultimate producibility, growth potential, and other factors.

(a) After receipt of initial proposals, written or oral discussions shall be conducted with all responsible offerors who

submitted proposals within a competitive range, price and other factors considered, except that this requirement need not necessarily be applied to:

(1) Procurements not in excess of $2,500;

(2) Procurements in which rates or prices are fixed by law or regulations;

(3) Procurements in which time of delivery will not permit such discussions;

(4) Procurements of the set-aside portion of partial set-asides or by small business restricted advertising; or

(5) Procurements in which it can be clearly demonstrated from the existence of adequate competition or accurate prior cost experience with the product or service that acceptance of the most favorable initial proposal without discussion would result in a fair and reasonable price: *Provided,* That the request for proposals contains a notice to all offerors of the possibility that award may be made without discussion of proposals received and, hence, that proposals should be submitted initially on the most favorable terms, from a price and technical standpoint, which the offeror can submit to the Government. In any case where there is uncertainty as to the pricing or technical aspects of any proposals, the contracting officer shall not make award without further exploration and discussion prior to award. Also, when the proposal most advantageous to the Government involves a material departure from the stated requirements, consideration shall be given to offering the other firms which submitted proposals an opportunity to submit new proposals on a technical basis which is comparable to that of the most advantageous proposal: *Provided,* That this can be done without revealing to the other firms any information which the offeror does not want disclosed to the public (see § 1-3.103(b)).

(b) Whenever negotiations are conducted with more than one offeror, no indication shall be given to any offeror of a price which must be met to obtain further consideration since such practice constitutes an auction technique which must be avoided. Likewise, no offeror shall be advised of his relative standing with other offerors as to price or be furnished information as to the prices offered by other offerors. After receipt of proposals, no information regarding the number or identity of the offerors participating in the negotiations shall be made available to the public or to any one whose official duties do not require such knowledge. Whenever negotiations are conducted with several offerors, while such negotiations may be conducted successively, all offerors selected to participate in such negotiations (see § 1-3.805-1(a)) shall be offered an equitable opportunity to submit such price, technical, or other revisions in their proposals as may result from the negotiations. All such offerors shall be informed of the specified date (and time if desired) of the closing of negotiations and that any revisions to their proposals should be submitted by that date. In addition, all such offerors shall be informed that after the specified date for the closing of negotiations, no information (other than pre-award notice of unacceptable proposals or offers) will be furnished to any offeror until award has been made. For the requirements and limitations concerning the furnishing of information after awards have been made, see § 1-3.103.

(c) Except where cost-reimbursement type contracts are to be used (see § 1-3.805-2), a request for proposals may provide that after receipt of initial technical proposals, such proposals will be evaluated to determine those which are acceptable to the Government or which, after discussion, can be made acceptable, and upon submission of prices thereafter, award shall be made to that offeror of an acceptable proposal who is the low responsible offeror.

(d) When, during negotiations, a substantial change occurs in the Government's requirements or a decision is reached to relax, increase, or otherwise modify the scope of the work or statement of requirements, such change or modification shall be made in writing as an amendment to the request for proposals, and a copy shall be furnished to each prospective contractor. Oral advice of change or modification may be given if (1) the changes involved are not complex in nature, (2) all prospective contractors are notified simultaneously (preferably by a meeting with the contracting officer), and (3) a record is made of the oral advice given. In such instances, however, the oral advice should be promptly followed by a written amendment verifying such oral advice previously given. The dissemination of oral advice of changes or modifications separately to each prospective contractor during individual negotiation sessions should be avoided unless preceded, accompanied, or immediately followed by a written amendment to the request for proposals embodying such changes or modifications.

§ 1-3.805-2 Cost-reimbursement type contracts.

In selecting the contractor for a cost-reimbursement type contract, estimated costs of contract performance and proposed fees should not be considered as controlling, since in this type of contract advance estimates of cost may not provide valid indicators of final actual costs. There is no requirement that cost-reimbursement type contracts be awarded on the basis of either (a) the lowest proposed cost, (b) the lowest proposed fee, or (c) the lowest total estimated cost plus proposed fee. The award of cost-reimbursement type contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns. The cost estimate is important to determine the prospective contractor's understanding of the project and ability to organize and perform the contract. The agreed fee must be within the limits prescribed by law and agency procedures and appropriate to the work to be performed (see § 1-3.808). Beyond this, however, the primary consideration in determining to whom the award shall be made is: which contractor can perform the contract in a manner most advantageous to the Government.

§ 1-3.806 Cost, profit, and price relationships.

(a) Where products are sold in the open market, costs are not necessarily the controlling factor in establishing a particular seller's price. Similarly, where competition may be ineffective or lacking, estimated costs plus estimated profit are not the only pricing criteria. In some cases, the price appropriately may represent only a part of the seller's cost and include no estimate for profit or fixed fee, as in research and development projects where the contractor is willing to share part of the costs. In other cases, price may be controlled by competition as set forth in § 1-3.805-1(a). The objective of the contracting officer shall be to negotiate fair and reasonable prices in which due weight is given to all relevant factors, including those in § 1-3.102.

(b) Profit or fee is only one element of price and normally represents a smaller proportion of the total price than do such other estimated elements as labor and material. While the public interest requires that excessive profits be avoided, the contracting officer should not become so preoccupied with particular elements of a contractor's estimate of cost and profit that the most important consideration, the total price itself, is distorted or diminished in its significance. Government procurement is primarily concerned with the reasonableness of the price which the Government pays and only secondarily with the eventual cost and profit to the contractor.

§ 1-3.807 Pricing techniques.

§ 1-3.807-1 General.

(a) Policies set forth in this Subpart 1-3.8 may be applied in a variety of ways in the evaluation of offerors' or contractors' proposals and in the negotiation of contract prices. This § 1-3.807 describes the principal price and cost evaluation techniques and the circumstances under which each may be used. They are equally applicable to initial and subsequent price negotiations.

(b) For the purpose of this § 1-3.807, the terms "adequate price competition" and "established catalog or market prices of commercial items sold in substantial quantities to the general public" shall be construed in accordance with the following general guidelines.

(1) *Adequate price competition.* (i) Price competition exists if offers are solicited and (A) at least two responsible offerors (B) who can satisfy the purchaser's (e.g., the Government's) requirements (C) independently contend for a contract to be awarded to the responsive and responsible offeror submitting the lowest evaluated price (D) by submitting priced offers responsive to the expressed requirements of the solicitation. Whether there is price competition for a given procurement is a matter of judgment to be based on evaluation of whether each of the foregoing conditions (A) through (D) is satisfied. Generally, in making this judgment, the smaller the number of offerors, the greater the need for close evaluation.

(ii) If conditions (A) through (D) in (i) above are met, price competition may be presumed to be "adequate" unless the purchaser (e.g., the contracting officer) finds that:

(A) The solicitation was made under conditions that unreasonably deny to one or more known and qualified offerors an opportunity to compete;

(B) The low competitor has such a determinative advantage over the other competitors that he is practically immune to the stimulus of competition in proposing a price (e.g., a determinative advantage because substantial costs, such as start-up or other nonrecurring expenses, have already been absorbed in connection with previous sales, thus placing the competitor in a preferential position); or

(C) The lowest final price is not reasonable and supports such finding by an enumeration of the facts upon which it is based: *Provided,* That such finding is approved at a level above the contracting officer.

(iii) A price is "based on" adequate price competition if it results directly from such competition or, if price analysis (not cost analysis) shows clearly that the price is reasonable in comparison with current or recent prices for the same or substantially the same items procured in comparable quantities under contracts awarded as a result of adequate price competition (e.g., exercise of an option in a contract for which there was adequate price competition if the option price has been determined to be reasonable and the option price is not greater than the contract price; or an item is normally procured competitively but in a particular situation only one offer is solicited or received, and the price clearly is reasonable in comparison with recent purchases of comparable quantities for which there was adequate price competition).

(2) *Established catalog or market prices of commercial items sold in substantial quantities to the general public.* Application of this exception also requires judgment and analysis on a case-by-case basis. In making this judgment, the various elements of the term must be considered and a price must meet all these conditions in order to be considered for exception. In other words, the price must be, or be based on, (i) an established catalog or market price, (ii) of commercial items, (iii) sold in substantial quantities, (iv) to the general public. The following criteria should be applied in determining whether an item falls within the scope of this exception:

(A) An "established catalog price" is a price included in a catalog, price list, schedule, or other form that (I) is regularly maintained by the manufacturer or vendor, (II) is either published or otherwise available for inspection by customers, and (III) states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An "established market price" is a current price, established in the usual and ordinary course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or vendor.

(B) A "commercial item" is an item, which term includes both supplies and services, of a class or kind which (I) is regularly used for other than Government purposes, and (II) is sold or traded in the course of conducting normal business operations.

(C) Supplies are "sold in substantial quantities" when the facts or circumstances are sufficient to support a reasonable conclusion that the quantities regularly sold are sufficient to constitute a real commercial market for the item. Nominal quantities, such as models, specimens, samples, and prototype or experimental units, cannot be considered as meeting this requirement. Services are sold in substantial quantities if they are customarily provided by the contractor, with personnel regularly employed, and with equipment, if any is necessary, regularly maintained, solely or principally for the purpose of providing such services.

(D) An item is sold "to the general public" if it is sold to other than affiliates of the seller for end use by other than the Government. Items sold to affiliates of the seller and sales for end use by the Government are not sales to the general public.

A price may be considered to be "based on" established catalog or market prices of commercial items sold in substantial quantities to the general public if the item being purchased is sufficiently similar to such a commercial item to permit the difference between the prices of the items to be identified and justified without resort to cost analysis.

§ 1–3.807–2 Requirements for price or cost analysis.

(a) *General.* Some form of price or cost analysis should be made in connection with every negotiated procurement action. The presence of adequate price competition, however, limits considerably the degree of analysis required. Cost data shall not be requested when the contracting officer anticipates that there will be adequate price competition. However, if he determines, after proposals have been submitted, that there is not, in fact, adequate price competition, cost data should then be requested, unless there are other bases (e.g., pricing data) available for evaluating the reasonableness of the quoted price (see paragraphs (a) and (e) of § 1–3.807–3). When there is not adequate price competition and cost analysis is necessary, the extent of the analysis should be limited to that necessary to assure reasonableness of the price.

(b) *Price analysis.* (1) Price analysis is the process of examining and evaluating a prospective price by the use of price data, not including a contractor's or subcontractor's cost data. Price analysis may be accomplished in various ways, including the following:

(i) The comparison of the price quotations submitted;

(ii) The comparison of prior quotations and contract prices with current quotations for the same or similar end items (to provide a suitable basis for comparison, appropriate allowances must be made for differences in such factors as specifications, quantities ordered, time for delivery, Government-furnished materials, and the general level of business and prices);

(iii) The use of rough yardsticks (such as dollars per pound, per horsepower, or other units) to point up apparent gross inconsistencies which should be subjected to greater pricing inquiry;

(iv) The comparison of prices set forth in published price lists issued on a competitive basis, published market prices of commodities, and similar indicia, together with discount or rebate arrangements; and

(v) The comparison of proposed prices with estimates of cost independently developed by personnel within the contracting activity.

(2) Price analysis, without resort to cost analysis, normally shall be used to support the reasonableness of awards when there is adequate price competition or when price analysis by itself provides a reasonable basis for award consistent with the requirements of § 1–3.807–3.

(c) *Cost analysis.* (1) Cost analysis, as distinguished from price analysis, is the process of: (i) obtaining a breakdown of cost from prospective contractors or subcontractors; (ii) verifying cost data; (iii) evaluating specific elements of cost; and (iv) projecting cost data to determine the effect on prices of such factors as:

(A) The necessity for certain costs;

(B) The reasonableness of amounts estimated for the necessary costs;

(C) Allowances for contingencies;

(D) The basis used for allocation of overhead costs; and

(E) The appropriateness of allocations of particular overhead costs to the proposed contract.

(2) Among the evaluations that should be made where the necessary data are available, are comparisons of a contractor's or offeror's current estimated costs with:

(i) Actual costs previously incurred by the contractor or offeror;

(ii) The contractor's or offeror's last prior cost estimate for the same or a similar item or with a series of his prior estimates;

(iii) Current cost estimates from other possible sources; and

(iv) Prior estimates of historical costs of other contractors manufacturing the same or similar items.

(3) Forecasting future trends in costs from historical cost experience is of primary importance in pricing. In periods of either rising or declining costs, an adequate cost analysis must include some evaluation of the trends. In cases involving production of recently developed, complex equipment, even in periods of relative price stability, trend analysis of basic labor and materials costs should be undertaken.

§ 1–3.807–3 Cost and pricing data.

(a) *General.* When there is adequate price competition, cost data should not be requested regardless of the dollar amount involved. However, in the absence of adequate price competition or

some other basis for assuring reasonableness of price, the negotiating team must analyze the contractors' (or prospective contractors') proposals and must be in possession of accurate, complete, and current cost or pricing data before decisions are made on contract prices. Accordingly, the contractor should be required to furnish such data promptly as it becomes available throughout the negotiation process. Where cost or pricing data has been furnished, it shall be considered in making decisions on contract prices. As a general rule, cost data should not be requested when it has been determined that proposed prices are, or are based on, "established catalog or market prices of commercial items sold in substantial quantities to the general public." Where, however, despite the willingness of a number of commercial purchasers to buy an item at such a catalog or market price, the purchaser (e.g., the contracting officer) finds that that price is not reasonable and supports such finding by an enumeration of the facts upon which it is based, cost data may be requested if necessary to establish a reasonable price: *Provided,* That such finding is approved at a level above the contracting officer. In addition, cost data may be requested, if necessary, where there is such a disparity between the quantity being procured and the quantity for which there is such a catalog or market price that pricing cannot reasonably be accomplished by comparing the two. Where an item is substantially similar to a commercial item for which there is an established catalog or market price at which substantial quantities are sold to the general public, but the offered price of the former is not considered to be "based on" the price of the latter in accordance with § 1–3.807–1(b)(2), any requirement for cost data should be limited to that pertaining to the differences between the items if this limitation is consistent with assuring reasonableness of the price.

(b) *Requirements for cost or pricing data.* (1) The contracting officer shall, except as provided in § 1–3.807–3(b)(2), require the prospective contractor or contractor, as the case may be, to submit in writing cost or pricing data and to certify, by use of the certificate set forth in § 1–3.807–4, that, to the best of his knowledge and belief, the cost or pricing data be submitted were accurate, complete, and current, prior to:

(i) The award of any cost-reimbursement type, incentive, or price redeterminable contract expected to exceed $100,000 in amount;

(ii) The award of any firm fixed-price, or fixed-price with escalation, negotiated contract expected to exceed $100,000 in amount;

(iii) The pricing of any contract modification expected to exceed $100,000 in amount to any formally advertised contract, or to any negotiated contract (whether or not cost or pricing data were required in connection with the initial pricing of the contract): *Provided,* That in the case of a modification to a formally advertised contract, the clause in § 1–3.814–1(b) was included in the contract at the time of award (see § 1–3.807–3(d)).

(2) The requirements of § 1–3.807–3(b)(1) need not be applied where, in the case of (i) thereof, construction contracts or basic research contracts with educational institutions are involved; where, in the case of (ii) and (iii) thereof, it is determined by the contracting officer that the price negotiated is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation; or where, in exceptional cases, the head of the agency or his authorized designee authorizes the waiver of those requirements and states in writing his reasons for such determination (see § 1–3.302(e)).

(3) The furnishing and certification of cost or pricing data shall be required prior to the award of any negotiated contract not expected to exceed $100,000 in amount, or prior to the pricing of any contract modification not expected to exceed $100,000 in amount, to any formally advertised or negotiated contract whether or not cost or pricing data were required in connection with the initial pricing of the contract: *Provided,* That it is considered that the circumstances warrant such action.

(4) Any contractor who has been required to submit and certify cost or pricing data in accordance with this § 1–3.807–3(b) shall also be required to obtain cost or pricing data from his subcontractors under the circumstances set forth in the appropriate clause in § 1–3.814–3.

(5) Where a certificate of cost or pricing data is required by this § 1–3.807–3(b), the applicable clause in § 1–3.814–1 shall be included in the contract, and the appropriate clauses in §§ 1–3.814–2 and 1–3.814–3 shall be used if required by those sections. Where such a certificate is required in accordance with § 1–3.807–3(b)(3), those clauses shall be modified, as appropriate.

(c) *Requests for proposals.* Where it is reasonably expected that the requirements of § 1–3.807–3(b) for the furnishing and certification of cost or pricing data may be applicable with respect to the award or modification of a resulting contract, the request for proposals shall contain the clauses required by § 1–3.807–3(b)(5) and a statement substantially as follows:

CERTIFICATION OF COST OR PRICING DATA

Where a prospective contractor is required to furnish cost or pricing data in conjunction with the negotiation of a contract pursuant to this Request for Proposals, he may be required to certify, prior to contract award, that, to the best of his knowledge and belief, the cost or pricing data furnished was accurate, complete, and current as of the date he makes the certification.

(d) *Invitations for bids.* Where it is reasonably expected that the requirements of § 1–3.807–3(b) for the furnishing of cost or pricing data may be applicable with respect to a change or modification to a resulting contract, the invitation for bids shall contain the clauses required by § 1–3.807–3(b)(5).

(e) The provisions of this paragraph (e) do not apply to awards of cost-reimbursement type, incentive, or price redeterminable contracts. Cost data shall not be requested prior to the award of any contract anticipated to be for $2,500 or less and generally should not be requested for modifications in those amounts. In procurements where it is anticipated that the contract award or modification will be between $2,500 and $10,000, cost data generally should not be requested. In almost all awards between $2,500 and $10,000 and modifications of $10,000 or less, the administrative costs will outweigh the pricing benefits which might otherwise accrue and some form of price analysis is almost always adequate in these situations. With respect to procurements where the amount of the award or modification is anticipated to be between $10,000 and $100,000, cost analysis and the obtaining of cost data from contractors is discouraged; any reasonably satisfactory method of price analysis is preferred to cost analysis in situations falling within these dollar amounts.

§ 1–3.807–4 Certificate of current cost or pricing data.

When a certification of cost or pricing data is required in accordance with § 1–3.807–3, it shall be in the form set forth below and shall be included in the contract file:

CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief:

(a) Complete [pricing data] [and] [cost data]* current as of _____ have
Date
been considered in preparing the_____
_____** and submitted in writing to the Contracting Officer or his representative;

(b) All significant changes in the above data which occurred since the aforementioned date through_____***
Date
have been similarly submitted; and no more recent significant change in such data was known to the undersigned at the time of executing this certificate; and

(c) All of the data submitted are accurate.

Name _____
Title _____
Firm _____
_____
(*Date of execution*)

Note that 18 U.S.C. 1001 prescribes criminal penalties for making false representations to the Government.

*Select one or more of the bracketed series of words, as appropriate, for submission involved.

**Describe the proposal, quotation, request for price adjustment, or other submission involved, giving appropriate identifying number (e.g., RFP No.).

***This date shall be as close to the date of agreement on the negotiated price or fee as is practicable.

§ 1–3.807–5 Defective cost or pricing data.

(a) Where any price to the Government, including profit or fee and including price adjustments, must be negotiated largely on the basis of cost or pricing data furnished by the contractor, it is essential that all data that might reasonably affect the price negotiations be disclosed and that such data be accurate, complete, and current (see § 1–3.807–3). If an agreed price includes amounts which can only be attributed to

erroneous or incomplete cost or pricing data, it is not a fair price and the resultant profits are not earned profits. Where negotiations are to be conducted on the basis of full disclosure, failure of one party to proceed on that basis results in something less than full mutual assent to the price negotiated so that, in this sense, the price is not fully agreed to, and fairness warrants its adjustment. The clauses set forth in § 1–3.814–1 are designed to give the Government in such a case an enforceable contract right to a price adjustment, that is, to a reduction in the price to what it demonstrably would have been if the contractor had not failed to disclose significant and reasonably available data or had not furnished inaccurate data.

(b) Under the "Price Reduction for Defective Cost or Pricing Data" clauses in § 1–3.814–1, the Government's right to reduce the prime contract price extends to cases where the prime contract price was increased by any significant sums because a subcontractor furnished defective cost or pricing data in connection with a subcontract where a certificate of cost or pricing data was or should have been furnished. These clauses also provide that the prime contractor and higher tier subcontractors shall include similar clauses in certain of their subcontracts to provide them with comparable rights to price reductions. In order to secure price reductions based on defective cost or pricing data furnished by a subcontractor, however, the Government, the prime contractor, or higher tier subcontractor must be able to show that cost or pricing data furnished by subcontractors was, in fact defective. In some cases, as where the defective nature of a subcontractor's data is only disclosed by Government audit, the information necessary to support a reduction in prime contract and subcontractor prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, the contracting officer should make such necessary information available upon request to the prime contractor or higher tier subcontractors; however, if the release of such information would compromise Government security or disclose trade secrets or other confidential business information, it shall be made available only under conditions that will fully protect it from improper disclosure. Information made available pursuant to this paragraph shall be limited to that used as the basis for the prime contract price reduction.

(c) Inasmuch as price reductions under the Price Reduction for Defective Cost or Pricing Data clauses may involve first- and lower-tier subcontractors as well as the prime contractor, the contracting officer should give the prime contractor reasonable advance notice before making a determination to reduce the contract price under such clauses, in order to afford the prime contractor an opportunity to take any action deemed advisable by him, particularly in connection with any subcontracts that may be involved.

§ 1–3.807–6 Refusal to provide cost or pricing data.

If cost or pricing data from the contractor (or offeror) are required to permit adequate analysis of the contractor's proposal in accordance with § 1–3.807–3 and the contractor has refused to provide such data, the contracting officer shall try to persuade the contractor to furnish such data. If the contractor persists in his refusal to provide necessary data, the contracting officer shall withhold making the award or price adjustment and refer the case to higher authority within the agency. Such referral shall include a complete statement of the attempts made to resolve the matter, including (a) steps taken to secure essential cost data, (b) efforts to secure the contractor's cooperation in the establishment of a satisfactory business relationship, (c) any assurances offered, such as agreements to adequately safeguard information furnished, and (d) a statement concerning the practicability of obtaining the supplies or services from another source of supply.

§ 1–3.807–7 Unacceptable substitutes for pricing negotiations.

A certificate of cost or pricing data (see § 1–3.807–4) shall not be considered a substitute for examination and analysis of the contractor's proposal. Contracting officers shall not rely on profit limiting statutes as remedies for ineffective pricing.

§ 1–3.807–8 Evaluation and pricing of individual contracts.

Each contract shall be priced separately and independently, and no consideration shall be given to losses or profits realized or anticipated in the performance of other contracts. This prohibition neither prevents the negotiation of fixed overhead and other rates applicable to several contracts during annual or other specific periods nor prohibits forward pricing agreements applicable to several contracts. A proposed price reduction under another contract or other contracts shall not be used as an evaluation factor.

§ 1–3.807–9 Specified contingencies.

When a contract is to include a provision for an upward adjustment of price upon the happening of a specified contingency (e.g., escalation clauses, Government-furnished property clauses, tax clauses), the contract price should not include any amount in anticipation of such contingency.

§ 1–3.807–10 Subcontracting considerations in cost analysis.

(a) The amount and quality of subcontracting may be a major factor influencing price. Since a large portion of the procurement dollar is spent by prime contractors in subcontracting for work, raw materials, parts, and components, efficient purchasing practices by a contractor will contribute heavily toward efficient and economical production. While basic responsibility rests with the prime contractor for decisions to make or buy, for selection of subcontractors, and for subcontract prices and subcontract performance, the contracting officer must have adequate knowledge of those elements and their effect on prime contract prices. Therefore, contractors' "make-or-buy" programs and proposed subcontracts should be reviewed in accordance with Subpart 1–3.9 and the information from such review should be used in negotiating prime contract prices. Even though not specifically required by Subpart 1–3.9, the contracting officer should, where appropriate, elicit from the offeror or contractor information concerning:

(1) His purchasing practices;

(2) The principal components to be subcontracted and the contemplated subcontractors, including (i) the degree of competition obtained, (ii) cost or price analyses or price comparisons accomplished, including accurate, complete, and current cost or pricing data, and (iii) the extent of subcontract supervision;

(3) The types of subcontracts; i.e., firm fixed-price or other (see § 1–3.401); and

(4) The estimated total extent of subcontracting, including procurement of purchased parts and materials.

(b) In the review of subcontracting there should be assurance that the contractors obtain competition, if available, from qualified sources in their award of subcontracts to the extent consistent with the procurement of the required services or supplies. Contractors shall be required to undertake appropriate price analysis (see § 1–3.807–2(b)) in all significant subcontract transactions, and to undertake cost analysis (see § 1–3.807–2(c)) if competition is not available or does not yield reasonable subcontract prices. Where the contracting officer's consent to subcontract is required (see § 1–3.903), price or cost analysis shall be required as a condition to such consent.

(c) Where subcontracts are placed on a price redetermination or fixed-price incentive basis, it is particularly important in negotiating revisions of prime contract prices that there be substantial assurance that there was initial close pricing of subcontracts. Also, contracting officers should be alert to the risk of establishing firm redetermined prime contract prices while a major subcontract is still subject to price redetermination and may eventually be redetermined at a price far lower that that ascribed to it in redetermining the prime contract price, with consequent profits to the contractor far in excess of those contemplated in the prime contract price negotiation. However, in some cases, it may be appropriate to negotiate firm contract prices even though the contractor has not yet established final subcontract prices, if the contracting officer can justify as reasonable the amount included for subcontracting, e.g., where fairly definite cost data on subcontract prices are available. In other cases, where certain subcontracts are subject to redetermination and available cost data on these subcontracts are highly indefinite but other circumstances require prompt negotiation of revised prime contract prices the contract modification which evidences the revised contract prices should provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent

redetermination of the specified subcontracts. This may be done by including in the contract modification a provision substantially as follows:

Promptly upon the establishment of firm prices for each of the subcontracts listed below, the Contractor shall submit, in such form and detail as the Contracting Officer may reasonably require, a statement of costs incurred in the performance of such subcontract and the firm price established therefor. Thereupon, notwithstanding any other provisions of this contract as amended by this modification, the Contractor and the Contracting Officer shall negotiate an equitable adjustment in the total amount paid or to be paid under this contract to reflect such subcontract price revision. The equitable adjustment shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

[List subcontracts]

(d) In considering cost-plus-fee subcontracts while negotiating prime contracts where cost analysis is performed, the contracting officer shall make every effort to insure (but in consenting to cost-plus-fee subcontracts, the contracting officer shall insure) that fees under such subcontracts never exceed the limits prescribed by agency procedures in accordance with § 1–3.405–5(c)(2). These limits should not be inserted in the prime contract because such action might tend to inflate fees customarily negotiated at lower rates.

§ 1–3.807–11 Overhead rate considerations.

(a) Indirect costs commonly known as overhead are defined and described in § 1–15.203. Criteria for treatment and application of indirect costs to contracts are also set forth in § 1–15.203.

(b) In order to assure a reasonable approximation and allocation of indirect costs on an equitable basis to individual contracts, negotiators shall utilize audited overhead data or negotiated overhead rates, where available, in connection with negotiation of contracts and shall not, unless authorized by the head of a procuring activity, seek preferential overhead rates.

(c) If there is any question with respect to audited overhead data or negotiated overhead rates, or if such are not available, the negotiator should normally avail himself of the audit services of the agency in consonance with § 1–3.809.

§ 1–3.807–12 Sole source items.

When purchases of standard commercial or modified standard commercial items are to be made from sole source suppliers, use of the techniques of price and cost analysis may not always be possible. In such instances and consistent with the volume of procurement normally consummated with the contractor, the contractor's price lists and discount or rebate arrangement should be examined and negotiations conducted on the basis of the "best user," "most favored customer," or similar practice customarily followed by the contractor. Such price negotiations should consider the volume of business anticipated for a fixed period, such as a fiscal year, rather than the size of the individual procurement being negotiated.

§ 1–3.808 Profit or fee.

§ 1–3.808–1 General.

A fair and reasonable provision for profit or fee cannot be made by simply applying a certain predetermined percentage to the cost estimate or selling price of a product. Rather, the profit or fee should be first established as a dollar amount, after considering the factors set forth in this § 1–3.808. Therefore, where a fee is involved and it is necessary to determine the percentage relationship between the fee and the estimated cost of the contract in order to comply with administrative and statutory limitations on fees for cost-reimbursement type contracts (see § 1–3.405–5(c)(2), the percentage shall be determined only after the dollar amount of the fee has been established for negotiation purposes.

§ 1–3.808–2 Factors for determining fee or profit.

The factors set forth in this § 1–3.808–2 should be considered in determining profit or fee in all contracts, whether for supplies or services; for construction work; or for experimental, developmental, or research work; and whether of the fixed-price type or of the cost-reimbursement type unless otherwise specified in the particular factor. All of the factors should be evaluated in the light of the basic policy set forth in § 1–3.801(a) which provides that supplies and services shall be procured from responsible sources at fair and reasonable prices calculated to result in the lowest overall cost to the Government.

(a) *Effect of competition.* When competition is effective and proposals are on a firm fixed-price basis, the contracting officer normally need not consider in detail the amount of estimated profit included in a price. When effective competition is lacking, and in all cases where cost analysis is performed in accordance with § 1–3.807–2(c) the estimate for profit, target profit or fee, or the proposed fixed fee should be analyzed in the same manner as all other elements of price, evaluating the factors set forth in this § 1–3.808.

(b) *Degree of risk.* The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, where a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk-reducing measures, the amount of profit or fee should be less than where the contractor assumes all risk.

(c) *Nature of work to be performed.* A major consideration in the determination of the amount of profit or fee, particularly in connection with experimental, developmental, or research work, is the difficulty or complexity of the work to be performed and any unusual demands of the contract, such as whether the project involves a new approach unrelated to existing equipment or only refinements on existing equipment, whether the caliber or class of engineer involved is that of an "idea-man," or whether the contractor is to be required by the contract to assign to the work unusually skilled talent.

(d) *Extent of Government assistance.* The Government encourages its contractors to perform their contracts with the minimum of financial, facilities, or other assistance from the Government. Where extraordinary financial, facilities, or other assistance must be furnished to a contractor by the Government, such extraordinary assistance should have a modifying effect in determining what constitutes a fair and reasonable profit or fee.

(e) *Extent of the contractor's investment.* The extent of a contractor's total investment (i.e., both equity and borrowed capital) in the performance of the contract will be taken into consideration in determining the amount of the fee or profits.

(f) *Character of contractor's business.* Recognition must be given to the type of business normally carried on by the contractor, the complexity of manufacturing techniques, the rate of capital turnover, and the effect of each individual procurement upon such business. For example, where a contractor is engaged in an industry where the turnover of working capital is low, generally the profit objective on individual contracts is higher than in those industries where the turnover is more rapid.

(g) *Contractor's performance.* In addition to the factors set forth in § 1–3.102, the contractor's past and present performance should be evaluated in such areas as quality of product, quality control, scrap and spoilage, efficiency in cost control (including need for and reasonableness of cost incurred), meeting delivery schedules, timely compliance with contractual provisions, creative ability in product development (giving consideration to commercial potential of product), engineering (including inventive, design simplification, and development contributions), management of subcontract programs, management of Government property, and any unusual services furnished by the contractor. Where a contractor has consistently achieved excellent results in the foregoing areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should be reflected in determining what constitutes a fair and reasonable profit or fee.

(h) *Subcontracting.* (1) In negotiating the profit or fee, subcontracting as a factor shall be segregated for separate evaluation, particularly as it bears on the contractor's technical supervision and management responsibility, financial investment, and degree of risk, as outlined above in this § 1–3.808–2. The degree and nature of subcontract programs vary on a broad spectrum. While it is not possible to define the exact profit or fee treatment to be accorded each situation, the general guidelines which follow shall be taken into consideration.

(2) The evaluation of a contractor's subcontracting program should not

consist merely of applying arbitrary percentages of profit to subcontract prices in negotiating the prime contract price. A relatively large amount of subcontracting by itself need not result in negotiation of correspondingly lesser profit or fee—the character and circumstances of the subcontracting and the effect on the prime contractor's costs must be taken into account. Although purchased material and subcontracted work are usually properly included in the base upon which profit or fee is computed, instances may arise in which a significant portion or portions of a contract are subcontracted in such a way that only a minimum amount of responsibility or risk remains with the prime contractor. In such case, in order to prevent unreasonable pyramiding of profit or fee, the amount of profit or fee attributable to the subcontracted work should be substantially less than where the contractor uses his own resources and retains substantial responsibility or risk. Of primary importance is the degree to which the subcontracting provides a better product and lower costs, with timely delivery, and in which the contractor assumes heavy managerial and technical effort, responsibility, and risk. Consideration must be given to the relationship which the prime contractor's estimated profit or fee on subcontracted work bears to his cost of placing and managing such subcontracted work.

(3) In establishing a contractor's fee or profit, favorable consideration shall be given to:

(i) The company's policies and procedures which energetically support Government small business and labor surplus area programs;

(ii) Any unusual efforts which the contractor displays in subcontracting with small business and labor surplus area concerns, particularly for developmental type work likely to result in later production opportunities; and

(iii) Effectiveness of the company in subcontracting with and furnishing assistance to such concerns, as compared to other comparable contractors.

In this connection, it is the responsibility of the purchasing activity to examine the contractor's past and present effectiveness and plans for seeking out qualified small business and labor surplus area concerns, and to require the contractor during negotiations to document his past, present, and planned performance in these areas.

(i) *Unrealistic estimates.* If records reveal that a contractor's actual costs are consistently lower than his estimated costs (indicating a practice of excessive estimates), and if the contractor refuses to provide what seems to be a reasonable estimate of costs, a lower profit or fee should be considered.

§ 1–3.808–3 Minimal fees or cost-sharing arrangements.

In certain circumstances, as where experimental, developmental, or research work is attractive because of direct or potential commercial applications, consideration should be given to using a contract providing for only a nominal or token fee, or no fee, or on a cost-sharing basis (see § 1–3.405–3).

§ 1–3.809 Audit as a pricing aid.

(a) *General.* The audit services of the agencies should be utilized as a pricing aid by the contracting officer to the fullest extent appropriate when the dollar amount involved is sufficiently large to, or special circumstances exist which, warrant the time and expense required for the particular type of advisory audit, special survey, or audit analysis of price or cost desired. Judicious use of audit services will expedite proper pricing. The determination as to the necessity of an audit report for pricing purposes is the responsibility of the contracting officer. When requesting audit services, the contracting officer shall state the purpose for which the report is to be used and define any specific areas of audit examination which should be given special attention.

(b) *Application.* Except for contracts containing retroactive price revision clauses, pricing techniques are concerned mainly with estimates of future costs. Therefore, audit reports for either retroactive or prospective pricing should not only establish costs accrued to a specific cut-off point for price proposal purposes but also should include cost trends and other available information which would be of assistance to the contracting officer in price negotiation. Such audit reports will serve a useful purpose in:

(1) The evaluation of contingency allowances, overhead allocations, purchasing management efficiency, and similar cost elements;

(2) Both the initial and subsequent pricing of contracts containing price revision clauses;

(3) Establishing limitations on costs and price revision adjustments; and

(4) Establishing negotiated overhead rates for cost-reimbursement type contracts.

(c) *Conditions for use.* Close coordination between the audit agency and procurement personnel will assist in determining the necessity of audit of price or cost proposals or the necessity of special surveys relating to contractors' accounting or purchasing systems. Some of the conditions under which the contracting officer should consider the use of audit services include:

(1) Inadequate knowledge concerning the contractor's accounting policies, cost systems, or substantially changed methods or levels of operation.

(2) Previous unfavorable experience indicating doubtful reliability of the contractor's estimating, accounting, or purchasing methods.

(3) Procurement of a new product for which cost experience is lacking.

(4) Contract performance requiring a substantial period of time.

§ 1–3.810 [Reserved]

§ 1–3.811 [Reserved]

§ 1–3.812 [Reserved]

§ 1–3.813 Preproduction and startup and other nonrecurring costs.

(a) Estimates of preproduction and startup costs include such costs as preproduction engineering, special tooling, special plant rearrangement, training programs, and such nonrecurring costs as initial rework, initial spoilage, and pilot runs.

(b) Since an offeror may propose a price which does not include all preproduction and startup or other nonrecurring costs for the purpose of obtaining the first production contract and of gaining an advantage over competitors in negotiations for future procurements, it is important to know whether the offeror intends to absorb any portion of these costs or whether he plans to recover them in connection with subsequent pricing actions under the proposed or future contracts. This information is needed in evaluating competing proposals to determine which proposal is most likely to result in the lowest overall cost to the Government, particularly where the successful offeror is likely to become, in effect, a sole source for follow on procurement.

(c) When it is anticipated that such costs will be a significant factor in the evaluation of proposals for the procurement of an item, the request for proposals shall require the offeror to provide the following information:

(1) An estimate of the total of such costs;

(2) The extent to which these costs are included in the proposed price; and

(3) The intent to absorb, or plan for recovery, of any remaining costs. When entering into a contract with an offeror who has indicated that he intends to absorb any portion of these costs, the contract shall expressly provide that such portion will not be charged to the Government in any future noncompetitive procurement or other pricing action.

§ 1–3.814 Contract clauses.

Where a certificate of cost or pricing data is required in accordance with § 1–3.807–3(b), the applicable clause in § 1–3.814–1 shall be included in the contract, and the appropriate clauses in §§ 1–3.814–2 and 1–3.814–3 shall be used if required by those sections. See paragraphs (c) and (d) of § 1–3.807–3 for requirements for including the clauses in requests for proposals and invitations for bids.

§ 1–3.814–1 Price reduction for defective cost or pricing data.

(a) Where required in accordance with § 1–3.807–3(b)(5), the following clause shall be included (1) in negotiated cost-reimbursement type, price redeterminable, or incentive contracts over $100,000, and (2) in all other negotiated contracts over $100,000 where the price is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In addition, the clause, appropriately modified in respect to subcontracts of $100,000 or less, shall be included in other negotiated contracts for which a certificate of cost or pricing data was obtained in accordance with § 1–3.807–3(b)(3) in connection with the initial pricing of the contract.

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA

(a) If the Contracting Officer determines that any price, including profit or fee, negotiated in connection with this contract was increased by any significant sums because the Contractor, or any subcontractor in connection with a subcontract covered by (c) below, furnished incomplete or inaccurate cost or pricing data or data not current as certified in his Contractor's Certifiate of Current Cost or Pricing Data, then such price shall be reduced accordingly and the contract shall be modified in writing to reflect such adjustment.

(b) The failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) The Contractor agrees to insert the substance of paragraphs (a) and (c) of this clause in each of his cost-reimbursement type, price redeterminable, or incentive subcontracts hereunder in excess of $100,000, and in any other subcontract hereunder in excess of $100,000 unless the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceeds $100,000, the Contractor shall insert the substance of the following clause:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—PRICE ADJUSTMENTS

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000 that is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this clause shall be limited to such price adjustments.

(b) If the Contractor determines that any price, including profit or fee, negotiated in connection with any price adjustment under this contract was increased by any significant sums because the subcontractor or any of his subcontractors in connection with a subcontract covered by paragraph (c) below, furnished incomplete or inaccurate cost or pricing data or data not current as of the date of execution of the subcontractor's certificate of current cost or pricing data, then such price shall be reduced accordingly and the subcontract shall be modified in writing to reflect such adjustment.

(c) The subcontractor agrees to insert the substance of this clause in each subcontract hereunder which exceeds $100,000.

(b) Where required in accordance with § 1-3.807-3(b)(5), the following clause shall be included in all contracts, both formally advertised and negotiated, in excess of $100,000 other than those described in paragraph (a) of this § 1-3.814-1. In addition, the clause, modified as appropriate, shall be included in contracts of this type which do not exceed $100,000 where a certificate of cost or pricing data is required in accordance with § 1-3.807-3(b)(3) in connection with the pricing of contract modifications:

PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—PRICE ADJUSTMENTS

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000 that is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. The right to price reduction under this clause shall be limited to such price adjustments.

(b) If the Contracting Officer determines that any price, including profit or fee, negotiated in connection with any price adjustment under this contract was increased by any significant sums because the Contractor or any subcontractor in connection with a subcontract covered by paragraph (d) below furnished incomplete or inaccurate cost or pricing data or data not current as of the date of execution of his Contractor's Certificate of Current Cost or Pricing Data, then such price shall be reduced accordingly and the contract shall be modified in writing to reflect such adjustment.

(c) Failure to agree on a reduction shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(d) The Contractor agrees to insert the substance of paragraphs (a), (b), and (d) of this clause in each subcontract hereunder that exceeds $100,000.

(c) The requirement for inclusion of the clauses in paragraphs (a) and (b) of this § 1-3.814-1 in contracts with foreign governments or agencies thereof may be waived in exceptional cases where the head of the agency or his designee authorizes such waiver and states in writing his reasons for such determination.

§ 1-3.814-2 Audit and records.

(a) Where, in accordance with § 1-3.814-1(a), the clause therein is included in any firm fixed-price or fixed-price with escalation negotiated contract, the clause in this § 1-3.814-2(a) also shall be included in the contract. The clause shall be appropriately modified in the case of such contracts which do not exceed $100,000 (see § 1-3.807-3(b)(3)).

AUDIT

(a) For purposes of verifying that cost or pricing data submitted in conjunction with the negotiation of this contract or any contract change or other modification involving an amount in excess of $100,000 are accurate, complete, and current, the Contracting Officer or his authorized representatives shall, until the expiration of three years from the date of final payment under this contract, have the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of his Contractor's Certificate of Current Cost or Pricing Data.

(b) The Contractor agrees to insert the substance of this clause including this paragraph (b) in all subcontracts hereunder in excess of $100,000 where the price is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) Where, in accordance with § 1-3.814-1(b), the clause therein is included in any formally advertised or in any firm fixed-price or fixed-price with escalation negotiated contract, the clause in this § 1-3.814-2(b) also shall be included in the contract. The clause shall be appropriately modified in the case of such contracts which do not exceed $100,000 (see § 1-3.807-3(b)(3)). In negotiated contracts, delete from paragraph (b) of the clause the words "the Comptroller General of the United States."

AUDIT-PRICE ADJUSTMENTS

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000 that is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) For purposes of verifying that cost or pricing data submitted in conjunction with a contract change or other modification involving an amount in excess of $100,000 are accurate, complete, and current, the Contracting Officer, the Comptroller General of the United States, or any authorized representatives, shall, until the expiration of three years from the date of final payment under this contract, have the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of his Contractor's Certificate of Current Cost or Pricing Data.

(c) The Contractor agrees to insert the substance of this clause including this paragraph (c) in all subcontracts hereunder in excess of $100,000 where the price is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) Where, in accordance with § 1-3.814-1(a), the clause therein is included in any negotiated cost-reimbursement type, incentive, or price redeterminable contract, the clause in this § 1-3.814-2(c) also shall be included in the contract. The clause shall be appropriately modified in the case of such contracts which do not exceed $100,000.

AUDIT AND RECORDS

(a) The Contractor shall maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of this contract. The foregoing constitute "records" for the purposes of this clause.

(b) The Contractor's plants, or such part thereof as may be engaged in the performance of this contract, and his records shall be subject at all reasonable times to inspection and audit by the Contracting Officer or his authorized representative.

(c) The Contractor shall preserve and make available his records (1) until the expiration of three years from the date of final payment under this contract, and (2) for such longer period, if any, as is required by applicable statute, or by other clauses of this contract or by (i) or (ii) below.

(i) If this contract is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.

(ii) Records which relate to (A) appeals under the "Disputes" clause of this contract or (B) litigation or the settlement of claims arising out of the performance of this contract, shall be retained until such appeals, litigation, or claims have been disposed of.

(d)(1) The Contractor shall insert the substance of this clause, including the whole of this paragraph (d), in each subcontract

hereunder in excess of $100,000 that is not on a firm fixed-price basis.

(2) The Contractor shall insert the substance of the following clause in each firm fixed-price subcontract hereunder in excess of $100,000, except those subcontracts covered by subparagraph (3) below:

AUDIT

(a) For purposes of verifying that cost or pricing data submitted in conjunction with the negotiation of this contract or any contract change or other modification involving an amount in excess of $100,000 are accurate, complete, and current, the Contracting Officer, or his authorized representatives, shall, until the expiration of three years from the date of final payment under this contract, have the right to examine those books, records, documents, and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of his Contractor's Certificate of Current Cost or Pricing Data.

(b) The Contractor agrees to insert the substance of this clause including this paragraph (b) in all subcontracts hereunder in excess of $100,000 where the price is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(3) The Contractor shall insert the substance of the following clause in each firm fixed-price subcontract hereunder in excess of $100,000 where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

AUDIT—PRICE ADJUSTMENTS

(a) This clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000, that is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) For purposes of verifying that any cost or pricing data submitted in conjunction with a contract change or other modification involving an amount in excess of $100,000 are accurate, complete, and current, the Contracting Officer, or his authorized representatives, shall, until the expiration of three years from the date of final payment under this contract, have the right to examine those books, records, documents and other supporting data which will permit adequate evaluation of the cost or pricing data submitted, along with the computations and projections used therein, which were available to the Contractor as of the date of execution of his Contractor's Certificate of Current Cost or Pricing Data.

(c) The Contractor agrees to insert the substance of this clause including this paragraph (c) in all subcontracts hereunder in excess of $100,000 where the price is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(d) The requirement for inclusion of the clauses in paragraphs (a) and (b) of this § 1–3.814–2 may be waived for contracts with foreign governments or agencies thereof under circumstances where the requirement for the clauses in §§ 1–3.814–1 and 1–3.814–3 may be waived.

(e) The clause in § 1–7.101–10 shall be inserted in all negotiated fixed-price contracts in excess of $2,500, including contracts awarded under a total set-aside (small business restricted advertising, as defined in § 1–1.701–9) or a partial set-aside (see §§ 1–1.706 and 1–1.804), and a clause containing substantially the same provisions shall be inserted in all other negotiated contracts in excess of $2,500. In addition, the right of the contracting agency to inspect the plant and to audit the books and records of any prime contractor or subcontractor engaged in the performance of a cost type contract shall be expressly reserved in any such contract.

§ 1–3.814–3 Subcontractor cost and pricing data.

(a) Where, in accordance with § 1–3.814–1(a), the clause therein is included in any negotated contract over $100,000, the clause in this § 1–3.814–3(a) also shall be included in the contract. This clause, with appropriate reduction in the dollar amounts included therein, may be included in contracts not exceeding $100,000 which contain the clause in § 1–3.814–1(a).

SUBCONTRACTOR COST AND PRICING DATA

(a) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and

(2) Prior to the award of any other subcontract, the price of which is expected to exceed $100,000 or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(b) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (a) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the subcontract or subcontract change or modification.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in each subcontract hereunder which exceeds $100,000 unless the price thereof is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation. In each such excepted subcontract hereunder which exceeds $100,000, the Contractor shall insert the substance of the following clause:

SUBCONTRACTOR COST AND PRICING DATA—PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify, in substantially the same form as that used in the Certificate by the Prime Contractor to the Government, that, to the best of their knowledge and belief, the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modifications.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

(b) Where, in accordance with § 1–3.814–1(b), the clause therein is included in any formally advertised or negotiated contract in excess of $100,000, the clause in this § 1–3.814–3(b) also shall be included in the contract. This clause, with appropriate reduction in the dollar amounts included therein, may be included in contracts not exceeding $100,000 which contain the clause in § 1–3.814–1(b).

SUBCONTRACTOR COST AND PRICING DATA—PRICE ADJUSTMENTS

(a) Paragraphs (b) and (c) of this clause shall become operative only with respect to any change or other modification made pursuant to one or more provisions of this contract which involves a price adjustment in excess of $100,000. The requirements of this clause shall be limited to such price adjustments.

(b) The Contractor shall require subcontractors hereunder to submit in writing cost or pricing data under the following circumstances:

(1) Prior to award of any cost-reimbursement type, incentive, or price redeterminable subcontract, the price of which is expected to exceed $100,000; and

(2) Prior to award of any other subcontract, the price of which is expected to exceed $100,000, or to the pricing of any subcontract change or other modification for which the price adjustment is expected to exceed $100,000, where the price or price adjustment is not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or rates or prices set by law or regulation.

(c) The Contractor shall require subcontractors to certify that to the best of their knowledge and belief the cost and pricing data submitted under (b) above are accurate, complete, and current as of the date of the execution, which date shall be as close as possible to the date of agreement on the negotiated price of the contract modification.

(d) The Contractor shall insert the substance of this clause including this paragraph (d) in each subcontract hereunder which exceeds $100,000.

(c) The requirements for inclusion of the clauses in paragraphs (a) and (b) of this § 1-3.814-3 in contracts with foreign governments or agencies thereof may be waived where the head of the agency or his designee authorizes such waiver and states in writing his reasons for such determination.

Subpart 1-3.9—Subcontracting Policies and Procedures

§ 1-3.900 Scope of subpart.

This subpart sets forth policies and procedures for the evaluation, review, and approval of contractors' "make-or-buy" programs, purchasing systems, and proposed subcontracts.

§ 1-3.901 General.

(a) Information as to the contractor's "make-or-buy" program, purchasing system, and proposed subcontracts may be important to (1) negotiation of reasonable contract prices (see §§ 1-3.807-10 and 1-3.808-2(h)), (2) assurance of satisfactory contract performance or (3) carrying out Government policies regarding small business (see § 1-1.710-1), labor surplus areas (see § 1-1.805-1), acquisition and use of Government facilities, maintenance of mobilization base, or other policies which may be appropriate to the particular procurement. Therefore, Government surveillance of a contractor's "make-or-buy" program, purchasing system, and proposed subcontracts is required as set forth in this Subpart 1-3.9. Where "make-or-buy" decisions and subcontracting will have a substantial impact on any of the above mentioned factors, the contractor's "make-or-buy" program and subcontracting should, to the extent practicable, be evaluated and agreed on during negotiations.

(b) The subcontracting policies and procedures in this Subpart 1-3.9 should generally be applied to procurement where (1) the item, system, or work is complex, the dollar value is substantial, or competition is restricted, and (2) either (i) cost-reimbursement, price redetermination, or incentive-type contracts are to be used, or (ii) "make-or-buy" decisions are expected to have a substantial impact on negotiations leading to a firm fixed-price contract.

§ 1-3.902 "Make-or-buy" programs.

§ 1-3.902-1 Review of program.

(a) A "make-or-buy" program is that part of a contractor's written plan for the development or production of an end item which outlines the major components, assemblies, subassemblies, and parts to be manufactured (including testing, treating, and assembling) in his own facilities, and those which will be obtained elsewhere by subcontract. A "make" item is any item produced, or work performed, by the contractor or his affiliate, subsidiary, or division.

(b)(1) Where the nature of the procurement is such that, in view of the factors referred to in § 1-3.901(b), review of the "make-or-buy" program is appropriate or is otherwise considered essential, the prospective contractor shall be required to submit his proposed "make-or-buy" program, together with sufficient related data, to the contracting officer for evaluation of such factors in (e) of this § 1-3.902-1 as are pertinent.

(2) At the time a request for proposals is issued, the procuring agency shall request potential suppliers to furnish a "make-or-buy" program on all negotiated procurements except as otherwise provided in (3), (4), or (5) of this § 1-3.902-1(b).

(3) A "make-or-buy" program will not be required when a proposed contract has a total estimated value of less than $1,000,000 unless the contracting officer specifically determines that a "make-or-buy" program is appropriate.

(4) Research and development contracts are exempt from the provisions of this § 1-3.902 unless it can reasonably be anticipated that follow-on quantities of the product will be procured.

(5) A "make-or-buy" program will not be required if the contracting officer determines that none of the factors in § 1-3.901(b) are applicable.

(c) The contractor will be informed that the program he submits should be confined to important items which, because of their complexity, quantity, cost or requirement for additional Government factilities, normally would require company management review of the "make-or-buy" decision. "Detail parts" or "off-the-shelf" items will not be incorporated in a "make-or-buy" program unless their potential impact on such program or production schedule makes their inclusion necessary. If the design status of the end item being procured is not sufficiently advanced to permit accurate precontract identification of all items that may be subject to "make-or-buy" decisions, the contractor shall be notified that such items must be submitted, when identifiable under the terms of the Changes to Make-or-Buy Program clause (see § 1-3.902-3).

(d) The contractor shall be required to submit, with his proposal, a "make-or-buy" program of important items including in addition to information required by § 1-3.902-1(b), (1) a description by which each such item can be readily identified, (2) a recommendation to make or buy the item or defer the decision, (3) when feasible, the names of proposed subcontractors, and (4) the important items to be made by the contractor, including a designation of the plant and division in which the contractor proposes to perform the work.

(e) "Make-or-buy" programs shall be evaluated and agreed upon by the contractor and the procuring activity at the earliest practicable time during negotiations. In reviewing the "make-or buy" program during the negotiations, the effect of the following factors on the interests of the Government shall be considered:

(1) The effect of the contractor's plan to "make-or-buy," as the case may be, on price, quality, delivery, and performance.

(2) Whether the contractor plans to broaden his base of subcontractors through competition.

(3) Whether the contractor has properly considered the competence, abilities, experience, and capacities available within other firms.

(4) Whether small business concerns can produce the item or perform the work in question and at what price.

(5) Whether the contractor or major subcontractors propose to do work in plant, the nature of which differs significantly from their normal in-plant operations or for which they are not historically suited.

(6) Whether production of the item or performance of the work will create a requirement, either directly or indirectly, for additional facilities to be furnished by the Government, or the continued use of Government-owned facilities, by the contractor or by subcontractors.

(7) Whether the contractor proposed to ask the Government to furnish additional facilities to do the work in plant for which there is capacity elsewhere which is competitive in quality, delivery, and overall cost, and is acceptable as a source to the contractor.

(8) Whether the item or work has been subcontracted on this or previous contracts.

(9) Other factors, such as the nature of the item, experience with similar items, future requirements, engineering, tooling, starting load costs, market conditions, and the availability of personnel and material.

(f) The procuring agency will review the "make-or-buy" program to determine if all appropriate items are included or if it contains items that should be deleted because of their relatively minor importance. In all considerations relative to a "make-or-buy" program, the procuring agency will obtain the advice and assistance of all appropriate personnel whose knowledge would contribute to the adequacy of the review.

(g) Before agreeing to a "make-or-buy" program (or consenting to any change therein which, in the opinion of the contracting officer, would reduce the anticipated participation of small business), the procuring activity shall invite the advice and counsel of the SBA by permitting SBA representatives (regularly assigned to the activity) to review all pertinent facts and make recommendations thereon. Such review by SBA should be concurrent with the review by the procuring activity (or, in the case of changes, the contracting officer). Where urgent circumstances do not permit such a concurrent review, or where SBA fails to respond on a timely basis, the contracting officer shall include an explanatory statement in the contract file and shall transmit a copy to the SBA representative.

(h) After agreement on the program is reached, the contracting officer shall notify the contractor as to the Government's approval of the program and shall inform the contractor as to any requirement for further review during performance of the contract. For example, if follow-on procurements occur, the procuring activity and the contractor will review the existing "make-or-buy" program to determine whether it should be revised.

§ 1-3.902-2 Approval of programs.

(a) Proposed "make" items shall not be agreed to when the products or services under consideration:

(1) Are not regularly manufactured or provided by the contractor, and are available—quality, quantity, delivery, and other essential factors considered—from other firms at prices no higher than if the contractor makes or provides the product or service;

(2) Are regularly manufactured or provided by the contractor, and are available—quality, quantity, delivery, and other essential factors considered—from other firms at prices lower than if the contractor makes or provides the product or service; or

Provided, That such items may be agreed to, notwithstanding (1) and (2), if in the opinion of the contracting officer the overall cost of the contract to the Government would be increased if the items were "bought".

(b) Approval of the contractor's purchasing system shall not constitute approval of the "make-or-buy" program.

§ 1-3.902-3 Contract clause.

The following clause shall be incorporated in all cost-reimbursement, price redetermination, or incentive type contracts as to which a "make-or-buy" program has been agreed upon:

CHANGES TO MAKE-OR-BUY PROGRAM

The Contractor agrees to perform this contract in accordance with the "make-or-buy" program attached to this contract, except as hereinafter provided. If the Contractor desires to change the "make-or-buy" program, he shall notify the Contracting Officer in writing of the proposed change reasonably in advance and shall submit justification in sufficient detail to permit evaluation of the proposed change. Changes in the place of performance of work on any "make" item in the "make-or-buy" program are subject to this requirement. With respect to items deferred at the time of negotiation of this contract for later addition to the "make-or-buy" program, the Contractor shall notify the Contracting Officer of each proposed addition at the earliest possible time, together with justification in sufficient detail to permit evaluation. The Contractor shall not, without the written consent of the Contracting Officer, make changes or additions to the program. However, in his discretion, the Contracting Officer may ratify in writing any changes or additions. The "make-or-buy" program attached to this contract shall be deemed to be modified in accordance with the written consent or ratification by the Contracting Officer.

[End of Clause]

§ 1-3.902-4 Administration of program.

(a) On applicable contracts, the cognizant contract administration office will establish a procedure with the contractor to assure timely compliance with the terms of the contract clause. This procedure will include provisions for processing changes to the established "make-or-buy" program and for obtaining "make-or-buy" decisions for items reserved for deferred decisions or unidentified at the time of contract negotiations.

(b) When a "make-or-buy" program is agreed upon with a contractor, or there are changes or additions to a "make-or-buy" program, the consideration given each item on such program will be documented in the contract file. If a contract (including supplemental agreements for new procurement) except one specifically exempted by § 1-3.902-1(b), does not include the Changes to Make-or-Buy Program clause, the contracting officer will document the contract file with a written statement of facts to sustain and make clear the appropriateness of the determination not to include the clause. Such determination will be based on one of the following: (1) the contract is on a firm fixed-price basis; (2) the contract is not exempt but there are no items which can be identified as requireing a "make-or-buy" program as defined in § 1-3.902-1(a); or (3) a deviation has been approved.

§ 1-3.903 Review and approval of contractor's purchasing system and subcontracts.

§ 1-3.903-1 [Reserved]

§ 1-3.903-2 Review and approval of subcontracts.

(a) When the prime contract is not to be placed on a firm fixed-price basis, review of subcontracts prior to placement may be desirable since the ultimate cost to the Government will depend in part on subcontract prices and performance. Contract provisions requiring advance notification to the contracting officer of proposed subcontracts for materials, components, and other purchases may be appropriate both for information as to sources and prices and to provide an opportunity for review and for approval or objection by the contracting officer prior to award of the subcontracts. Careful and thorough evaluation of subcontracts prior to placement is particularly necessary when:

(1) The prime contractor's purchasing system or performance thereunder is considered inadequate;

(2) Subcontracts are for items for which there is no competition or for which the proposed prices appear unreasonable, and the amounts involved are substantial (see § 1-3.807-10(b));

(3) Close working arrangements or business or ownership affiliations exist between the prime and the subcontractor which may preclude the free use of competition or result in higher subcontract prices than would otherwise be obtained;

(4) A subcontract is being proposed at a price less favorable than that which has been given by the subcontractor to the Government, all other factors such as manufacturing period and quantity being comparable; or

(5) A subcontract is to be placed on a fixed-price incentive, time and material, labor-hour, fixed-price redeterminable, or cost-reimbursement basis.

(b)(1) Prime contract provisions relating to subcontracts, including those requiring advance notification, review, or approval thereof, should be consistent with the amount and character of subcontract work and with the overall character and type of the prime contract and the conditions applicable to its use as described in Subpart 1-3.4; and should involve the Government to the minimum extent practicable in the contractor's exercise of management responsibility, but give reasonable assurance that adequate subcontracting opportunities have been afforded to small business and that the Government is receiving the greatest practical return for its expenditure. For example, if the contract is on a firm fixed-price basis except for a clause permitting price escalation resulting from cost increases for certain materials, the prime contract may limit the contracting officer's right of review of subcontracts to those for materials covered by the escalation clause. In the case of cost-reimbursement type contracts, advance notification, and prior consent or approval of subcontracts should be required. (Section 304(b) of the Act (41 U.S.C. 254(b)) requires that all such contracts shall provide for advance notification of any subcontract thereunder on a cost-plus-a-fixed-fee basis and of any fixed-price subcontract or purchase order which exceeds in dollar amount either $25,000 or 5 per centum of the total estimated cost of the prime contract.)

(2) Provisions in prime fixed-price contracts relating to subcontract review may, as appropriate, be confined to one major subcontract or to certain classes of subcontracts; may set a floor above which advance approval of proposed subcontracts may be required before placement; or may be tailored to cover unusual or particular circumstances.

(3) In those instances where a contractor's purchasing system, including its small business program has been deemed adequate, review of subcontracts generally may not be necessary. However, contracting officers shall conduct periodic reviews of the application of the system to insure conformance therewith.

(4) In instances where subcontracts have been placed on a cost-reimbursement or time and materials basis, contracting officers should be skeptical of approving the repetitive or unduly protracted use of such types of contracts and should follow the principles of § 1-3.803(b).

(c) In cases where the prime contract reserves a right for the contracting officer to review or approve subcontracts, the prime contract shall also reserve to the Government the right to inspect and audit the books and records of such subcontractors. Whenever such first tier subcontracts are of the cost-reimbursement, fixed-price incentive, or time and material type, a similar right shall be reserved to the Government to inspect and audit the books and records of lower tier subcontractors: *Provided*, That such a right shall not be reserved contractually at or below the point where a firm fixed-price subcontract intervenes.

PART 1-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 1-4.1—[Reserved]

Subpart 1-4.2—[Reserved]

Subpart 1-4.3—[Reserved]

Subpart 1-4.4—[Reserved]

Subpart 1-4.5—[Reserved]

Subpart 1-4.6—Livestock Products

Sec.
1-4.600 Scope.
1-4.601 General.
1-4.602 Definition of livestock products.
1-4.603 Exception.
1-4.604 Procedures.
1-4.605 Statement of eligibility clause.
1-4.606 Humane method of livestock slaughter clause.
1-4.607 Reporting violations.

AUTHORITY: The provisions of this Part 1-4 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 1-4.1 [Reserved]

Subpart 1-4.2 [Reserved]

Subpart 1-4.3 [Reserved]

Subpart 1-4.4 [Reserved]

Subpart 1-4.5 [Reserved]

Subpart 1–4.6—Livestock Products

§ 1–4.600 Scope.

This subpart sets forth the policies and procedures applicable to the procurement of livestock products.

§ 1–4.601 General.

Public Law 85–765, as amended, commonly known as the Humane Slaughter Act of 1958 (7 U.S.C. 1901–1906), provides certain restrictions on the procurement of livestock products by Federal agencies and instrumentalities. The Act states the policy of the United States to be that the slaughtering of livestock, and the handling of livestock in connection with slaughter, shall be carried out only by humane methods. In essence, the Act prohibits the purchase by the Federal Government of livestock products produced or processed by any slaughterer or processor which in any of its plants (or in the plants of an affiliated slaughterer or processor) slaughters, or handles in connection with slaughter, livestock by any method other than humane. Further, the Act requires a supplier to make a statement concerning his eligibility under the Act to supply livestock products, the statement to be such that the maker will be subject to prosecution if the statement is false.

§ 1–4.602 Definition of livestock products.

"Livestock products" means any article of food, or any article intended for or capable of being used as food, for either humans or animals, which is derived or prepared, in whole or in part, from slaughtered cattle, calves, horses, mules, sheep, swine, or goats. Livestock products do not include (a) supplies, the animal product portion of which is less than 5 percent by weight of the net unit weight, and (b) poultry.

§ 1–4.603 Exception.

The requirements of this Subpart 1–4.6 do not apply to contracts for livestock products, executed and to be performed outside the United States, its possessions, and Puerto Rico.

§ 1–4.604 Procedures.

(a) Proposed suppliers of livestock products shall be informed of the requirements of the Humane Slaughter Act and shall be required to furnish a statement of eligibility in accordance with this § 1–4.604.

(b) Except as provided in (c) and (d) of this § 1–4.604, the Statement of Eligibility (Humane Slaughter Act) set forth in § 1–4.605 shall be included in all invitations for bids, requests for proposals, and other contractual documents for livestock products, and shall be required to be duly signed by the supplier (contractor).

(c) Where small purchases are involved (see Subpart 1–3.6), it will be sufficient if, as a part of the purchase documentation, the supplier (contractor) furnishes, over his signature, only paragraph (a) of said Statement of Eligibility (Humane Slaughter Act).

(d) When frequent purchases are made from the same supplier (contractor) or the contracting officer deems it otherwise appropriate, the Statement of Eligibility (Humane Slaughter Act) may be obtained from the supplier (contractor) at reasonable intervals, but not less often than annually. When such Statement has been obtained, the clause set forth in § 1–4.606 may be inserted, in lieu of said Statement of Eligibility (Humane Slaughter Act), in all contracts or purchase orders issued to the supplier.

§ 1–4.605 Statement of eligibility clause.

The following statement of eligibility clause shall be used in accordance with § 1–4.604:

STATEMENT OF ELIGIBILITY (HUMANE SLAUGHTER ACT)

(a) The supplier (contractor) agrees that livestock products sold to the Government, except products produced or processed from livestock slaughtered outside the United States, its possessions, and Puerto Rico, conform to the requirements of the Humane Slaughter Act of 1958 (7 U.S.C. 1901–1906).

(b) "Livestock products" means any article of food, or any article intended for or capable of being used as food, for either humans or animals, which is derived or prepared, in whole or in part, from slaughtered livestock, namely, cattle, calves, horses, mules, sheep, swine, or goats. Livestock products do not include (1) supplies, the animal product portion of which is less than 5 percent by weight of the net unit weight, and (2) poultry.

(c) A slaughterer or processor shall be deemed to be affiliated with another slaughterer or processor if it controls, or is controlled by, or is under common control with, such other slaughterer or processor.

(d) Livestock products which conform to the requirements of the Humane Slaughter Act of 1958 are products which have been produced and processed either:

(1) By those slaughterers and processors which, in all of their plants and in all of the plants of slaughterers and processors with which they are affiliated, slaughter, and handle in connection with slaughter, livestock only by methods designated as humane by the Secretary of Agriculture; or

(2) From livestock slaughtered in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument, which ritual requirements have been designated as humane methods of slaughter by the subject Act.

(e) This statement is made with full knowledge that it will be relied upon by the Government in entering into contracts with the supplier (contractor) and in payment of claims thereunder.

WARNING

Making any false statement herein or submission of any false claim hereunder will subject supplier (contractor) to punishment as provided in Title 18, United States Code, Crimes and Criminal Procedure.

Date _____

_____
(Name of Supplier-Contractor)

By _____
(Title)

_____
(Address)

§ 1–4.606 Humane method of livestock slaughter clause.

The following clause shall be used in accordance with § 1–4.604(d):

HUMANE METHOD OF LIVESTOCK SLAUGHTER

(a) The supplier (contractor) agrees that livestock products sold to the Government, except products produced or processed from livestock slaughtered outside the United States, its possessions, and Puerto Rico, conform to the requirements of the Humane Slaughter Act of 1958 (7 U.S.C. 1901–1906).

(b) The supplier (contractor) shall have furnished the Government a Statement of Eligibility (Humane Slaughter Act) before award of this contract or issuance of this purchase order, and such Statement is hereby incorporated by reference.

§ 1–4.607 Reporting violations.

Reports of possible violation of a statement of eligibility given in accordance with § 1–4.604 shall be made to the Department of Justice by each agency in accordance with agency procedures.

PART 1-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

Subpart 1-5.1—[Reserved]

Subpart 1-5.2—[Reserved]

Subpart 1-5.3—Excess Personal Property

Sec.
1-5.300 Scope of subpart.
1-5.301 Definition of excess personal property.
1-5.302 Policy.
1-5.303 Implementation of policy.
1-5.304 Assistance by General Services Administration in filling requirements from excess.

Subpart 1-5.4—[Reserved]

Subpart 1-5.5—[Reserved]

Subpart 1-5.6—[Reserved]

Subpart 1-5.7—[Reserved]

Subpart 1-5.8—[Reserved]

Subpart 1-5.9—Use of GSA Supply Sources by Prime Contractors in Performing Cost-Reimbursement Type Contracts

Sec.
1-5.900 Scope of subpart.
1-5.901 Policy.
1-5.902 Authorization to prime contractors.
1-5.903 Procedure for placing orders.
1-5.903-1 Orders under Federal Supply Schedule contracts.
1-5.903-2 Orders for GSA stores stock.
1-5.904 Furnishing information to contractors.
1-5.905 Payment for GSA stores stock.
1-5.906 Control of property acquired under authorizations.

AUTHORITY: The provisions of this Part 1-5 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 1-5.1—[Reserved]

Subpart 1-5.2—[Reserved]

Subpart 1-5.3—Excess Personal Property

§ 1-5.300 Scope of subpart.

This subpart sets forth policies and related material regarding the use of excess personal property as a source of supply. This subpart does not include, modify, or supersede instructions concerning the reassignment of personal property within executive agencies and the transfer of excess, or other instructions concerning the utilization of Government-owned personal property, which are contained in Chapter III, Title 1, Personal Property Management, Regulations of the General Services Administration.

§ 1-5.301 Definition of excess personal property.

"Excess personal property" means any personal property under the control of any Federal agency which is not required for its needs and the discharge of its responsibilities, as determined by the head thereof.

§ 1-5.302 Policy.

To the fullest extent practicable, agencies shall use excess personal property as the first source of supply in fulfilling their requirements and requirements of their cost-type contractors.

§ 1-5.303 Implementation of policy.

(a) In giving effect to the policy stated in § 1-5.302, agencies should provide that:

(1) Personnel authorized to approve actions for procurement or other acquisition of personal property will make positive efforts to obtain excess before such actions are undertaken.

(2) Personnel mentioned in (1) of this § 1-5.303(a) will receive available information concerning excess personal property from appropriate General Services Administration regional offices.

(b) Prior to procurement or other acquisition of property, careful and receptive consideration shall be given to utilization of known usable excess personal property of a similar type, including the possibility of substitution or adaptation of excess items not identical with requested items, whether the excess items are unused, rehabilitated, or in used condition, and regardless of whether the intended acquisition would be from General Services Administration stores stock or from other sources of supply.

§ 1-5.304 Assistance by General Services Administration in filling requirements from excess.

(a) Information regarding the availability of excess personal property may be obtained through the following:

(1) Personal contact with the General Services Administration or the holding installation.

(2) Review of excess personal property catalogs and bulletins circularized by the General Services Administration.

(3) Submission of personal property requirements to the regional offices of the General Services Administration. (GSA Form 1539, Request for Excess Personal Property, is available for this purpose.)

(4) Examination and inspection of reports and samples of excess personal property assembled for this purpose in General Services Administration regional offices.

(b) The General Services Administration will assist agencies in meeting their requirements for property of the types excepted from reporting as excess by subsection 302.02, Chapter III, Title 1, Personal Property Management, Regulations of the General Services Administration. Federal agencies requiring such property should contact the appropriate General Services Administration regional office. General Services Administration area utilization officers, stationed at key military excess generating points throughout the United States, are screening and offering for Government use non-reported excess personal property as it becomes available for transfer.

Subpart 1-5.4—[Reserved]

Subpart 1-5.5—[Reserved]

Subpart 1-5.6—[Reserved]

Subpart 1-5.7—[Reserved]

Subpart 1-5.8—[Reserved]

Subpart 1-5.9—Use of GSA Supply Sources by Prime Contractors in Performing Cost-Reimbursement Type Contracts

§ 1-5.900 Scope of subpart.

This subpart prescribes policies and procedures for the guidance of Federal agencies in authorizing the use of General Services Administration (GSA) supply sources (Federal Supply Schedule contracts and GSA stores stock) by their prime contractors in performing cost-reimbursement type contracts (see § 1-3.404).

§ 1-5.901 Policy.

(a) When a Federal agency deems that it is in the best interest of the Government to do so, the agency shall authorize its prime contractors to utilize GSA supply sources in performing cost-reimbursement type contracts. Before issuing such an authorization the agency should determine the advantage to be obtained therefrom in the performance of such contracts in terms of price, delivery, contract administration, and any other significant factors, and shall take into account any recommendations of the prime contractor.

(b) Except as otherwise specifically authorized by the Administrator of General Services, Government prime contractors and their subcontractors shall not be authorized to utilize GSA supply sources in connection with the performance of any fixed-price type contract, or any subcontract thereunder, or any subcontract under a cost-type contract, whether or not such contract provides for price adjustment, escalation, redetermination or modification, or cost-reduction incentive.

§ 1-5.902 Authorization to prime contractors.

(a) Authorization to prime contractors to utilize GSA supply sources shall be given only if title to property ordered on a purchase basis under Federal Supply Schedule contracts will pass to and vest in the Government directly from the Federal Supply Schedule contractor (rather than through the prime contractor), and title to Government-owned property ordered from GSA stores stock will remain in the Government.

(b) Authorizations to cost reimbursement type prime contractors to order equipment on a lease or rental basis under Federal Supply Schedule contracts shall be given only on the condition that such leased or rented equipment will be used solely in the performance of cost reimbursement type Government contracts.

(c) Authorizations shall be in writing and shall cite the number of the cost-reimbursement type contract; specify any applicable limitations on the authority, including the period of eligibility; and contain any other pertinent information (e.g., requirements relative to ordering, receiving, inspection, and payment).

(d) Copies of each authorization shall be forwarded to the General Services Administration, Federal Supply Service, Office of Supply Management, General Services Building, Washington, D.C., 20405, and to the GSA regional office serving the geographical area in which the facilities of the authorized prime contractor are located.

§ 5.903 Procedure for placing orders.

§ 1-5.903-1 Orders under Federal Supply Schedule contracts.

Orders placed by cost-reimbursement type prime contractors under Federal Supply Schedule contracts shall be placed in accordance with the provisions of the applicable Federal Supply Schedule and the authorization. They shall be accompanied by a copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule contractor) and shall contain a statement as follows:

This order is placed in behalf of the ____ (insert name of authorizing Federal agency) ____, in furtherance of U.S. Government contract No. ____ (insert number of cost-reimbursement type contract) ____, pursuant to written authorization dated ____ ----------, [[1]----------]. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

[1] Insert "a copy of which is attached," or "a copy of which you have on file," or other suitable language, as appropriate.

§ 1-5.903-2 Orders for GSA stores stock.

Orders placed by cost-reimbursement type prime contractors for GSA stores stock shall be placed in accordance with the authorization. They shall show the address to which billings are to be sent and shall contain a statement as follows:

This order is placed in behalf of the ____ (insert name of authorizing Federal agency) ____, in furtherance of U.S. Government contract No. ____ (insert number of cost-reimbursement type contract) ____, pursuant to written authorization dated ____ ---------.

§ 1-5.904 Furnishing information to contractors.

Federal agencies shall assist their prime contractors authorized to use GSA supply sources in obtaining pertinent Federal Supply Schedules and the GSA Stores Stock Catalog and appropriate supplements thereto, and shall furnish them with any other helpful information.

§ 1-5.905 Payment for GSA stores stock.

Bills for GSA stores stock will not be rendered by GSA until after shipment has been made. Agencies should direct their cost-reimbursement type prime contractors to make prompt payment. Contractors should be given permission to pay any such bills upon receipt. Necessary adjustments will be made by GSA subsequent to payment.

§ 1-5.906 Control of property acquired under authorizations.

Cost-reimbursement type contracts under which prime contractors are authorized to utilize GSA supply sources should contain specific provisions covering the control, use, and accountability of property acquired from those sources.

PART 1–6—FOREIGN PURCHASES

Subpart 1–6.1—Buy American Act—Supply and Service Contracts

Sec.	
1–6.100	Scope.
1–6.101	Definitions.
1–6.102	Statutory requirements.
1–6.103	Exceptions.
1–6.103–1	Use outside the United States.
1–6.103–2	Nonavailability in the United States.
1–6.103–3	Unreasonable cost or inconsistency with the public interest.
1–6.103–4	Scrap.
1–6.103–5	Panamanian supplies for use in Canal Zone.
1–6.104	Procedures.
1–6.104–1	Applicability.
1–6.104–2	[Reserved]
1–6.104–3	Certificate.
1–6.104–4	Evaluation of bids and proposals.
1–6.104–5	Contract clause.
1–6.105	Excepted articles, materials, and supplies.

Subpart 1–6.2—Buy American Act—Construction Contracts

Sec.	
1–6.200	Scope.
1–6.201	Definitions.
1–6.202	Buy American policy.
1–6.202–1	General.
1–6.202–2	Determining domestic construction material.
1–6.202–3	Panamanian material used in Canal Zone.
1–6.202–4	Noting exceptions and findings.
1–6.203	Unreasonable cost determination.
1–6.203–1	General.
1–6.203–2	Cost computation.
1–6.203–3	Deviations by agency head.
1–6.203–4	Small business.
1–6.204	Invitation provision.
1–6.205	Contract clause.
1–6.206	Violations.

AUTHORITY: The provisions of this Part 1–6 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

Subpart 1–6.1—Buy American Act—Supply and Service Contracts

§ 1–6.100 Scope.

This subpart implements the Buy American Act (41 U.S.C. 10a–d) and the policies set forth in Executive Order 10582, December 17, 1954, as amended by Executive Order No. 11051, September 27, 1962, with respect to supply and service contracts other than construction contracts. (For construction contracts, see Subpart 1–6.2.)

§ 1–6.101 Definitions.

As used in this subpart, the following terms have the meanings set forth below:

(a) "End products" means articles, materials, and supplies which are to be acquired for public use. As to a given contract, the end products are the items to be delivered to the Government, as specified in the contract, including articles, materials, and supplies to be acquired by the Government for public use in connection with service contracts.

(b) "Components" means those articles, materials, and supplies which are directly incorporated in end products.

(c) "United States" means the States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the Virgin Islands, and any other place subject to its jurisdiction.

(d) "Domestic source end product" means an unmanufactured end product which has been mined or produced in the United States, or an end product manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and, in the case of components of foreign origin, duty (whether or not a duty-free entry certificate may be issued). A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (1) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality, or (2) as to which the head of the agency concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

(e) "Foreign end product" means an end product other than a domestic source end product.

(f) "Domestic bid" means a bid or offered price for a domestic source end product, including transportation to destination.

(g) "Foreign bid" means a bid or offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate may be issued).

§ 1–6.102 Statutory requirements.

Except as provided in § 1–6.103, the Buy American Act requires that in the procurement of supplies and services only domestic source end products shall be acquired for public use. In determining whether an end product is a domestic source end product, only the end product and its components shall be considered.

§ 1–6.103 Exceptions.

§ 1–6.103–1 Use outside the United States.

The restrictions of the Buy American Act do not apply to articles, materials, or supplies for use outside the United States.

§ 1–6.103–2 Nonavailability in the United States.

The Buy American Act does not apply to articles, materials, or supplies of a class or kind which the Government has determined are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. (See § 1–6.105.)

§ 1–6.103–3 Unreasonable cost or inconsistency with the public interest.

The restrictions of the Buy American Act do not apply when it is determined by the head of an agency that the cost of a domestic source end product would be unreasonable or that its acquisition would be inconsistent with the public interest. Such determination shall be made in accordance with § 1–6.104–4.

§ 1–6.103–4 Scrap.

Scrap generated in, collected in, and prepared for processing in the United States shall be considered as of domestic origin.

§ 1–6.103–5 Panamanian supplies for use in Canal Zone.

Articles, materials, and supplies that are mined, produced, or manufactured in the Republic of Panama, when purchased for use in the Canal Zone, are exempted from the provisions of the Buy American Act (under item 3 of the Memorandum of Understandings Reached ancillary to the Treaty of Mutual Understanding and Cooperation between the United States of America and the Republic of Panama, signed January 25, 1955).

§ 1–6.104 Procedures.

§ 1–6.104–1 Applicability.

The following procedures apply to all contracts involving the procurement of end products, except contracts exclusively for end products for use outside the United States.

§ 1–6.104–2 [Reserved]

§ 1–6.104–3 Certificate.

Invitations for bids and requests for proposals shall require that each bid or proposal include a certificate substantially as follows:

BUY AMERICAN CERTIFICATE

The bidder or offeror hereby certifies that each end product, except the end products listed below, is a domestic source end product (as defined in the clause entitled "Buy American Act"); and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States:

Excluded end products (show country of origin for each excluded end product):

---

§ 1–6.104–4 Evaluation of bids and proposals.

(a) Unless otherwise determined by the head of the agency in accordance with the Buy American Act, where the procedures in this § 1–6.104–4 result in the acquisition of foreign end products, the acquisition of domestic source end products would be (1) unreasonable in cost or (2) inconsistent with the public interest (see § 1–6.103–3).

(b) Except as provided in paragraph (d) of this section, bids and proposals shall be evaluated as provided in this section so as to give preference to domestic bids. Each foreign bid shall be adjusted for purposes of evaluation by adding to the foreign bid (inclusive of duty) a factor of 6 percent of that bid, except that a 12 percent factor shall be used instead of the 6 percent factor if the firm submitting the low acceptable domestic bid is a small business concern or a labor surplus area concern (as defined in §§ 1–1.701 and 1–1.801, respectively), or both. However, if an award for more than $100,000 would be made to a domestic concern if the 12 percent factor is applied, but would not be made if the 6 percent factor is applied, the case shall be submitted to the head of the agency for decision as to whether the award to the small business concern or labor surplus area concern would involve unreasonable cost or inconsistency with the public interest (see § 1–6.103–3). If the foregoing procedure results in a tie between a foreign bid as evaluated and a domestic bid, award shall be made on the domestic bid. When more than one line item is offered in response to an invitation for bids or request for proposals, the appropriate factor shall be applied on an item-by-item basis, except that the factor may be applied to any group of items as to which the invitation for bids or request for proposals specifically provides that award is to be made on a particular group of items.

(c) Proposed awards shall be submitted, in accordance with agency procedures, to the agency head for decision where:

(1) Rejection of an acceptable low foreign bid is considered necessary to protect essential national security interests, such as maintenance of a mobilization base. Prior to rejection of bids or offered prices on the grounds that such rejection is necessary to protect essential national security interests, advice shall be obtained from the President or Director, Office of Emergency Planning.

(2) Rejection of any bid or proposal for other reasons of the national interest is considered necessary. However, information concerning rejection of bids or offered prices for reasons of the national interest not described or referred to in Executive Order No. 10582 shall be furnished to the Executive Office of the President, Bureau of the Budget.

(d) Deviations from the requirements of this § 1–6.104–4 may be authorized by the head of the agency in accordance with the Buy American Act and Executive Order No. 10582, as amended.

§ 1–6.104–5 Contract clause.

(a) The following clause shall be inserted in all contracts for supplies and in contracts for services involving furnishing supplies; except that it need not be inserted in contracts exclusively for articles, materials, and supplies for use outside the United States or which are of Panamanian origin for use in the Canal Zone:

BUY AMERICAN ACT SUPPLY AND SERVICE CONTRACTS

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "Components" means those articles, materials, and supplies which are directly incorporated in the end products;

(ii) "End products" means those articles, materials, and supplies which are to be acquired under this contract for public use; and

(iii) A "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b) (ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) Which are for use outside the United States;

(ii) Which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality;

(iii) As to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) As to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

(b) Where the term "secretary" is inapplicable to the agency, the term "head of the agency" may be substituted in the absence in the contract of the definition contained in § 1–7.101–1.

§ 1–6.105 Excepted articles, materials, and supplies.

Determinations under § 1–6.103–2 that certain articles, materials, and supplies are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality shall be made by each agency in accordance with agency procedures.

Subpart 1–6.2—Buy American Act—Construction Contracts

§ 1–6.200 Scope.

This subpart implements the Buy American Act (41 U.S.C. 10a–10d) and the policies set forth in Executive Order 10582, December 17, 1954 (3 CFR Supp.), with respect to construction contracts. This subpart does not apply to construction contracts (a) executed on Standard Form 19, Invitation, Bid, and Award (Construction, Alteration, or Repair) (small-amount construction contract form), or (b) not involving appropriated funds.

§ 1–6.201 Definitions.

As used in this subpart, the following definitions apply:

(a) "Construction" means construction, alteration, or repair of any public building or public work.

(b) "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work.

(c) "Component" means any article, material, or supply directly incorporated in construction material.

(d) "Domestic construction material" means an unmanufactured construction material which has been mined or produced in the United States, or a manufactured construction material which has been manufactured in the United States if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the construction material and, in the case of components of foreign origin, duty (whether or not a duty free entry certificate may be issued).

(e) "Nondomestic construction material" means a construction material other than a domestic construction material.

(f) "United States" means the States the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, the Virgin Islands, and any other place subject to its jurisidiction.

§ 1–6.202 Buy American policy.

§ 1–6.202–1 General.

Only domestic construction material shall be used in the performance of contracts for construction in the United States made by executive agencies, except for particular material as to which it is determined:

(a) By the agency head, that to make such requirement is impracticable;

(b) In accordance with agency procedures, that domestic construction material is unavailable in sufficient and reasonably available commercial quantities and of a satisfactory quality; or

(c) In accordance with § 1–6.203, that to make such requirement would unreasonably increase the cost.

§ 1–6.202–2 Determining domestic construction material.

In determining whether a construction material is a domestic construction material:

(a) Only the construction material and its components shall be considered.

(b) A component shall be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the construction material in which it is incorporated is manufactured in the United States and the component is of a class or kind determined by the agency concerned to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

§ 1–6.202–3 Panamanian material used in Canal Zone.

Construction material mined, produced, or manufactured in the Republic of Panama, when purchased for use in the Canal Zone, is exempted from the provisions of the Buy American Act (under item 3 of the Memorandum of Understandings Reached ancillary to the Treaty of Mutual Understanding and Cooperation between the United States of America and the Republic of Panama, signed January 25, 1955).

§ 1–6.202–4 Noting exceptions and findings.

Exceptions for nondomestic construction material because use of particular domestic construction material would be impracticable or would unreasonably increase the cost or because domestic construction material is unavailable shall be noted in the contract. Findings justifying such exceptions shall be made a matter of public record.

§ 1–6.203 Unreasonable cost determination.

§ 1–6.203–1 General.

A determination shall be made that the use of domestic construction material would unreasonably increase the cost where, with respect to each particular construction material:

(a) A bid or proposal offers nondomestic construction material (not listed as excepted in the invitation for bids or request for proposals), the cost of which, plus 6 percent thereof, is less than the cost of comparable domestic construction material; and

(b) That bid or proposal offers the lowest price of any received, after adding to each bid or proposal, for evaluation purposes, 6 percent of the cost of all nondomestic construction material, which qualifies under paragraph (a) above, offered in each bid or proposal.

§ 1–6.203–2 Cost computation.

The cost of construction material shall be computed as including all costs of delivery to the construction site. The cost of nondomestic construction material shall also include any applicable duty. Computations shall be based on costs on the date of opening of bids or proposals.

§ 1–6.203–3 Deviations by agency head.

Deviations from the requirements of § 1–6.203–1 may be authorized by the agency head in accordance with § 1–1.009 of this chapter, the Buy American Act, and Executive Order 10582.

§ 1–6.203–4 Small business.

Nothing in § 1–6.203–1 shall affect the authority or responsibility of an executive agency to place a fair proportion of its total contracts with small business concerns.

§ 1–6.204 Invitation provision.

Invitations for bids and requests for proposals for affected construction work shall include the following provision:

INFORMATION REGARDING BUY AMERICAN ACT

(a) The Buy American Act (41 U.S.C. 10a–10d) generally requires that only domestic construction material be used in the performance of this contract. (See the clause entitled "Buy American" in Standard Form 23A, General Provisions, Construction Contracts.) This requirement does not apply to the following construction material or components:

[List the excepted construction material or components]

(b) (1) Furthermore, bids or proposals offering use of additional nondomestic construction material may be acceptable for award if the Government determines that use of comparable domestic construction material is impracticable or would unreasonably increase the cost or that domestic construction material (in sufficient and reasonably available commercial quantities and of a satisfactory quality) is unavailable. Reliable evidence shall be furnished justifying such use of additional nondomestic construction material.

(2) Where it is alleged that use of domestic construction material would unreasonably increase the cost:

(i) Data shall be included, based on a reasonable canvass of suppliers, demonstrating that the cost of each such domestic construction material would exceed by more than 6 percent the cost of comparable nondomestic construction material. (All costs of delivery to the construction site shall be included, as well as any applicable duty.)

(ii) For evaluation purposes, 6 percent of the cost of all additional nondomestic construction material, which qualifies under paragraph (i) above, will be added to the bid or proposal.

(3) When offering additional nondomestic construction material, bids or proposals may also offer, at stated prices, any available comparable domestic construction material, so as to avoid the possibility that failure of a nondomestic construction material to be acceptable, under (1) above, will cause rejection of the entire bid.

§ 1–6.205 Contract clause.

Contracts for affected construction work shall include the following clause:

BUY AMERICAN

(a) Agreement. In accordance with the Buy American Act (41 U.S.C. 10a–10d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), the Contractor agrees that only domestic construction material will be used (by the Contractor, subcontractors, materialmen, and suppliers) in the performance of this contract, except for nondomestic material listed in the contract.

(b) Domestic construction material. "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds

50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

(c) Domestic component. A component shall be considered to have been "mined, produced, or manufactured in the United States" (regardless of its source in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

§ 1–6.206 Violations.

If the head of the agency concerned finds there has been a failure to comply with the Buy American provisions of the contract, he shall make public his findings and no other contract for the construction, alteration, or repair of any public building or public work in the United States or elsewhere shall be awarded, as provided in the Buy American Act, to the contractor, subcontractors, materialmen, or suppliers with which the contractor is associated or affiliated, for a period of 3 years after such finding is made public. (For debarment procedures, see Subpart 1–1.6.)

PART 1–7—CONTRACT CLAUSES

Sec.
1–7.000 Scope of part.

Subpart 1–7.1—Fixed-Price Supply Contracts

1–7.100 Scope of subpart.
1–7.101 Clauses.
1–7.101–1 Definitions.
1–7.101–2 Changes.
1–7.101–3 Extras.
1–7.101–4 Variation in quantity.
1–7.101–5 Inspection.
1–7.101–6 Responsibility for supplies.
1–7.101–7 Payments.
1–7.101–8 Assignment of claims.
1–7.101–9 Additional bond security.
1–7.101–10 Examination of records.
1–7.101–11 Default.
1–7.101–12 Disputes.
1–7.101–13 Notice and assistance regarding patent and copyright infringement.
1–7.101–14 Buy American Act.
1–7.101–15 Convict labor.
1–7.101–16 Contract Work Hours Standards Act—overtime compensation.
1–7.101–17 Walsh-Healey Public Contracts Act.
1–7.101–18 Equal opportunity.
1–7.101–19 Officials not to benefit.
1–7.101–20 Covenant against contingent fees.
1–7.101–21 Utilization of small business concerns.
1–7.101–22 Federal, State, and local taxes.
1–7.101–23 Liquidated damages.
1–7.101–24 Humane slaughter of livestock.
1–7.101–25 Utilization of concerns in labor surplus areas.
1–7.101–26 Small business subcontracting program.
1–7.101–27 Labor surplus area subcontracting program.
1–7.101–28 Termination for convenience of the Government.
1–7.101–29 Price reduction for defective cost or pricing data.
1–7.101–30 Audit and records.
1–7.101–31 Subcontractor cost and pricing data.
1–7.101–32 Advance payments.
1–7.101–33 Progress payments.
1–7.101–34 Workmen's compensation insurance (Defense Base Act).

Subpart 1–7.2—[Reserved]

Subpart 1–7.3—[Reserved]

Subpart 1–7.4—[Reserved]

Subpart 1–7.5—[Reserved]

Subpart 1–7.6—Fixed-Price Construction Contracts

1–7.600 Scope of subpart.
7–7.601 Required clauses.
1–7.601–1 Clauses in standard construction contract forms.
1–7.602 Additional standardized clauses.
1–7.602–1 Price adjustment for suspension, delay, or interruption of the work.
1–7.602–2 Termination for convenience of the Government, in contracts estimated to exceed $10,000.
1–7.602–3 Termination for convenience of the Government, in contracts estimated not to exceed $10,0000.
1–7.602–4 Price reduction for defective cost or pricing data.
1–7.602–5 Audit and records.
1–7.602–6 Subcontractor cost and pricing data.
1–7.602–7 Examination of records.
1–7.602–8 Advance payments.
1–7.602–9 Workmen's compensation insurance (Defense Base Act).
1–7.602–10 Federal, State, and local taxes.

AUTHORITY: The provisions of this Part 1–7 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1–7.000 Scope of part.

This part sets forth contract clauses for use in connection with the procurement of personal property and nonpersonal services (including construction).

Subpart 1–7.1—Fixed-Price Supply Contracts

§ 1–7.100 Scope of subpart.

This subpart sets forth contract clauses for use in fixed-price supply contracts.

§ 1–7.101 Clauses.

Except as otherwise provided in this § 1–7.101, the clauses set forth in this section shall be used in fixed-price supply contracts entered into by formal advertising and, unless inappropriate, should be used in negotiated contracts (other than for small purchases as defined in Subpart 1–3.6).

§ 1–7.101–1 Definitions.

DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

§ 1–7.101–2 Changes.

CHANGES

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

§ 1–7.101–3 Extras.

EXTRAS

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

§ 1–7.101–4 Variation in quantity.

VARIATION IN QUANTITY

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

§ 1–7.101–5 Inspection.

INSPECTION

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed, or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or

lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract: *Provided*, That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

§ 1–7.101–6 Responsibility for supplies.

RESPONSIBILITY FOR SUPPLIES

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

§ 1–7.101–7 Payments.

PAYMENTS

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either $1,000 or 50 percent of the total amount of this contract.

§ 1–7.101–8 Assignment of claims.

Insert the clause set forth in § 1–30.703 under the conditions contained therein.

§ 1–7.101–9 Additional bond security.

ADDITIONAL BOND SECURITY

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

§ 1–7.101–10 Examination of records.

EXAMINATION OF RECORDS

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding $2,500 and (ii) subcontracts or purchases orders for public utility services at rates established for uniform applicability to the general public.

The above clause shall be included in negotiated contracts as provided in § 1–3.814–2(e). When Standard Form 32 is used, the form need not be changed to delete the parenthetical sentence preceding paragraph (a) of the clause.

§ 1–7.101–11 Default.

Insert the clause set forth in § 1–8.707 under the conditions prescribed in § 1–8.700–2(b)(1).

§ 1–7.101–12 Disputes.

DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

§ 1–7.101–13 Notice and assistance regarding patent and copyright infringement.

NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suit against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

The above clause shall be included only if the amount of the contract exceeds $10,000.

§ 1–7.101–14 Buy American Act.

Insert the clause set forth in § 1–6.104–5 under the conditions contained therein.

§ 1–7.101–15 Convict labor.

Insert the clause set forth in § 1–12.203 under the conditions contained in § 1–12.202.

§ 1–7.101–16 Contract Work Hours Standards Act—overtime compensation.

Insert the clause set forth in § 1–12.303 under the conditions contained in § 1–12.302.

§ 1–7.101–17 Walsh-Healey Public Contracts Act.

Insert the clause set forth in § 1–12.605 under the conditions contained in § 1–12.602.

§ 1–7.101–18 Equal opportunity.

Insert the clause set forth in § 1–12.803–2 under the conditions contained in § 1–12.803–1.

§ 1–7.101–19 Officials not to benefit.

OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

§ 1–7.101–20 Covenant against contingent fees.

Insert the clause set forth in § 1–1.503 under the conditions contained in § 1–1.501.

§ 1–7.101–21 Utilization of small business concerns.

Insert the clause set forth in § 1–1.710–3(a) under the conditions and in the manner prescribed therein.

§ 1–7.101–22 Federal, State, and local taxes.

Insert either the clause in § 1–11.401–1 or the clause in § 1–11.401–2 and, when appropriate, insert the supplementary clause in § 1–11.401–3(a), in accordance with the conditions contained in those sections.

§ 1–7.101–23 Liquidated damages.

Insert the provision set forth in § 1–1.315–3 under the conditions and in the manner prescribed in § 1–1.315.

§ 1–7.101–24 Humane slaughter of livestock.

Insert the clause set forth in § 1–4.605 or in § 1–4.606 under the procedures provided in § 1–4.604.

§ 1–7.101–25 Utilization of concerns in labor surplus areas.

Insert the clause set forth in § 1–1.805–3(a) under the conditions and in the manner prescribed therein.

§ 1–7.101–26 Small business subcontracting program.

Insert the clause set forth in § 1–1.710–3(b) under the conditions and in the manner prescribed therein.

§ 1–7.101–27 Labor surplus area subcontracting program.

Insert the clause set forth in § 1–1.805–3(b) under the conditions and in the manner prescribed therein.

§ 1–7.101–28 Termination for convenience of the Government.

Whenever a termination for convenience clause is to be included, insert either the clause set forth in § 1–8.701 or the clause set forth in § 1–8.705–1, as appropriate, under the conditions prescribed in §§ 1–8.700–2(a)(1) and 1–8.700–2(a)(2).

§ 1–7.101–29 Price reduction for defective cost or pricing data.

Insert the appropriate clause set forth in § 1–3.814–1 under the conditions described therein.

§ 1–7.101–30 Audit and records.

Insert the appropriate clause or clauses set forth in § 1–3.814–2 under the conditions described therein.

§ 1–7.101–31 Subcontractor cost and pricing data.

Insert the appropriate clause set forth in § 1–3.814–3 under the conditions described therein.

§ 1–7.101–32 Advance payments.

When advance payments are to be made in accordance with Subpart 1–30.4, insert the appropriate provisions as prescribed in § 1–30.414–2.

§ 1–7.101–33 Progress payments.

When progress payments are to be made in accordance with Subpart 1–30.5, insert the appropriate clause as provided in § 1–30.510.

§ 1–7.101–34 Workmen's compensation insurance (Defense Base Act).

In accordance with the requirements of § 1–10.403, insert the clause set forth therein.

Subpart 1–7.2—[Reserved]

Subpart 1–7.3—[Reserved]

Subpart 1–7.4—[Reserved]

Subpart 1–7.5—[Reserved]

Subpart 1–7.6—Fixed-Price Construction Contracts

§ 1–7.600 Scope of subpart.

This subpart sets forth contract clauses for use in fixed-price construction contracts.

§ 1–7.601 Required clauses.

§ 1–7.601–1 Clauses in standard construction contract forms.

Subpart 1–16.4 prescribes standard forms for construction contracts which contain clauses required for use in accordance with said subpart. In addition, clauses are prescribed and set forth elsewhere as follows:

(a) The clause entitled "Termination for Default—Damages for Delay—Time Extensions," for use in contracts estimated to exceed $10,000, is set forth in § 1–8.709–1 to be used as prescribed in § 1–8.700–2(b)(4).

(b) The clause entitled "Termination for Default—Damages for Delay—Time Extensions," for use in contracts estimated not to exceed $10,000, is set forth in § 1–8.709–2 to be used as prescribed in § 1–8.700–2(b)(5).

§ 1–7.602 Additional standardized clauses.

§ 1–7.602–1 Price adjustment for suspension, delay, or interruption of the work.

The following clause shall be inserted in fixed-price construction contracts whenever it is desired to provide for suspension of the work for the convenience of the Government and/or to provide for administrative relief for unreasonable periods of delay caused by the contracting officer in the administration of the contract:

PRICE ADJUSTMENT FOR SUSPENSION, DELAY, OR INTERRUPTION OF THE WORK

(a) The Contracting Officer may order the Contractor in writing to suspend all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the Government.

(b) If, without the fault or negligence of the Contractor, the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Contracting Officer in the administration of the contract, or by his failure to act within the time specified in the contract (or if no time is specified, within a reasonable time), an adjustment shall be made by the Contracting Officer for any increase in the cost of performance of the contract (excluding profit) necessarily caused by the unreasonable period of such suspension, delay, or interruption, and the contract shall be modified in writing accordingly. No adjustment shall be made to the extent that performance by the Contractor would have been prevented by other causes even if the work had not been so suspended, delayed, or interrupted. No claim under this clause shall be allowed (i) for any costs incurred more than twenty days before the Contractor shall have notified the Contracting Officer in writing of the act or failure to act involved (but this requirement shall not apply where a suspension order has issued), and (ii) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption but not later than the date of final payment under the contract. Any dispute concerning a question of fact arising under this clause shall be subject to the Disputes clause.

§ 1–7.602–2 Termination for convenience of the Government, in contracts estimated to exceed $10,000.

Whenever a termination for convenience clause is to be included in contracts estimated to exceed $10,000, insert the clause set forth in § 1–8.703 under the conditions prescribed in § 1–8.700–2(a)(5).

§ 1–7.602–3 Termination for convenience of the Government, in contracts estimated not to exceed $10,000.

Whenever a termination for convenience clause is to be included in contracts estimated not to exceed $10,000, insert the clause set forth in § 1–8.705–2 under the conditions prescribed in § 1–8.700–2(a)(6).

§ 1–7.602–4 Price reduction for defective cost or pricing data.

Insert the appropriate clause set forth in § 1–3.814–1 under the conditions described therein.

§ 1–7.602–5 Audit and records.

Insert the appropriate clause set forth in § 1–3.814–2 under the conditions described therein.

§ 1–7.602–6 Subcontractor cost and and pricing data.

Insert the appropriate clause set forth in § 1–3.814–3 under the conditions described therein.

§ 1–7.602–7 Examination of records.

The clause set forth in § 1–7.101–10 shall be included in all negotiated fixed-price contracts in excess of $2,500.

§ 1–7.602–8 Advance payments.

When advance payments are to be made in accordance with Subpart 1–30.4, insert the appropriate provisions as prescribed in § 1–30.414–2.

§ 1–7.602–9 Workmen's compensation insurance (Defense Base Act).

In accordance with the requirements of § 1–10.403, insert the clause set forth therein.

§ 1–7.602–10 Federal, State, and local taxes.

Insert either the clause in § 1–11.401–1 or the clause in § 1–11.401–2 and, when appropriate, insert the supplementary clause in § 1–11.401–3(a), in accordance with the conditions contained in those sections.

PART 1–8—TERMINATION OF CONTRACTS

Sec.
1–8.000 Scope and applicability of part.

Subpart 1–8.1—Definition of Terms

1–8.101 Definitions.

Subpart 1–8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed-Price Type and Cost-Reimbursement Type Contracts

1–8.200 Scope of subpart.
1–8.201 General.
1–8.202 Notice of termination.
1–8.203 Methods of settlement.
1–8.204 Duties of prime contractor after receipt of notice of termination.
1–8.205 Duties of contracting officer after issuance of notice of termination.
1–8.206 Fraud or other criminal conduct.
1–8.207 Accounting review of prime contract settlement proposals and of subcontract settlements.
1–8.208 Settlement of subcontract claims.
1–8.208–1 Subcontractor's rights.
1–8.208–2 Prime contractor's rights and obligations.
1–8.208–3 Settlement procedure.
1–8.208–4 Authorization for subcontract settlements without approval or ratification.
1–8.208–5 Recognition of judgments and arbitration awards.
1–8.208–6 Delay in settlement of subcontractor claims.
1–8.208–7 Government assistance in settlement of subcontracts.
1–8.208–8 Assignment of rights under subcontracts.
1–8.209 Settlement agreements.
1–8.209–1 General.
1–8.209–2 Excepted items.
1–8.209–3 Government property.
1–8.209–4 No-cost settlement.
1–8.209–5 Partial settlements.
1–8.209–6 Joint settlement of two or more claims.
1–8.209–7 Settlement by determination.
1–8.210 Contracting officer's negotiation memorandum.
1–8.211 Review and approval of proposed settlements.
1–8.211–1 Settlement review boards.
1–8.211–2 Required review and approval.
1–8.211–3 Scope of review.
1–8.211–4 Action by board.
1–8.212 Payment.
1–8.212–1 Partial payments upon termination.
1–8.212–2 Final payment upon termination.
1–8.213 Cost principles applicable to the settlement of research and development contracts with educational institutions.

Subpart 1–8.3—Additional Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience

Sec.
1–8.301 General.
1–8.302 Cost principles.
1–8.303 Allowance for profit.
1–8.304 Adjustment for loss.
1–8.305 Deductions.
1–8.306 Completed end items.
1–8.307 Settlement proposals.
1–8.307–1 Submission of settlement proposals.
1–8.307–2 Bases for settlement proposals.
1–8.308 Limitation on settlements.

Subpart 1–8.4—Additional Principles Applicable to the Settlement of Cost-Reimbursement Type Contracts Terminated for Convenience

1–8.401 General.
1–8.402 Discontinuance of invoices or vouchers.
1–8.403 Notice to the General Accounting Office.
1–8.404 Procedure after invoices or vouchers are discontinued.
1–8.404–1 Submission of settlement proposal.
1–8.404–2 Interim negotiations.
1–8.404–3 Partial payments.
1–8.404–4 Adjustment of overhead costs.
1–8.404–5 Information concerning previous cost invoices or vouchers.
1–8.404–6 [Reserved]
1–8.404–7 [Reserved]
1–8.404–8 Final settlement.
1–8.405 Procedure for partial termination.
1–8.405–1 General.
1–8.405–2 Submission of settlement proposal (fee only).
1–8.405–3 Submission of invoices or vouchers.
1–8.406 Adjustment of fee.

Subpart 1–8.5—Disposition of Termination Inventory

1–8.501 General.
1–8.501–1 Methods of disposal.
1–8.501–2 General restrictions on contractor's authority.
1–8.502 Contractor-acquired property.
1–8.502–1 Purchase or retention at cost.
1–8.502–2 Return of property to suppliers.
1–8.502–3 Cost-reimbursement type contracts.
1–8.503 Inventory schedules.
1–8.503–1 Submission of inventory schedules.
1–8.503–2 Separate schedules.
1–8.503–3 Inventory descriptions.
1–8.503–4 Inventory schedule certificate.
1–8.503–5 Common items.
1–8.503–6 Withdrawals from inventory schedules.
1–8.503–7 Rejection and correction of inadequate schedules.
1–8.504 Scrap and salvage.

Sec.
1-8.504-1 General.
1-8.504-2 Scrap warranty.
1-8.505 Screening of serviceable or usable property.
1-8.506 Government-furnished property.
1-8.507 Sale or other disposition of termination inventory.
1-8.507-1 General.
1-8.507-2 [Reserved]
1-8.507-3 [Reserved]
1-8.507-4 Proceeds of sale.
1-8.507-5 Applicability of antitrust laws.
1-8.507-6 Foreign contractor inventory.
1-8.508 Donations.
1-8.509 Destruction or abandonment.
1-8.510 Special machinery, tooling, and equipment.
1-8.511 Removal and storage.
1-8.511-1 Special storage at the expense and risk of the contractor.
1-8.511-2 Storage at the expense and risk of the Government.
1-8.512 Review of property disposal.
1-8.513 Subcontractor termination inventory.
1-8.513-1 General policy.
1-8.513-2 Inventory schedules.
1-8.513-3 Scrap and salvage.
1-8.513-4 Serviceable or usable property.
1-8.514 Adjustment prior to final settlement.
1-8.514-1 Duty of contractors to inform Government.
1-8.514-2 Right of Government to review inventory schedules.
1-8.515 Accounting for termination inventory.

Subpart 1-8.6—Termination for Default

1-8.600 Scope of subpart.
1-8.601 General.
1-8.602 Default termination of fixed-price supply contracts.
1-8.602-1 The Government's right to terminate for default.
1-8.602-2 Effect of termination for default.
1-8.602-3 Procedure in case of default.
1-8.602-4 Procedure in lieu of termination for default.
1-8.602-5 Documentation in contract file.
1-8.602-6 Repurchase against contractor's account.
1-8.602-7 Other damages.
1-8.603 Default termination of fixed-price construction contracts.
1-8.603-1 Termination of the contractor's right to proceed.
1-8.603-2 Effect of termination for default.
1-8.603-3 Procedure in case of default.
1-8.603-4 Dealings with surety—takeover agreements.
1-8.603-5 Procedure in lieu of termination for default.
1-8.603-6 Documentation in contract file.
1-8.603-7 Liquidation of liability.
1-8.604 Default termination of cost-reimbursement type contracts.
1-8.605 Default termination of certain fixed-price research and development contracts.

Subpart 1-8.7—Clauses

1-8.700 Scope and applicability of subpart.
1-8.700-1 Scope.
1-8.700-2 Applicability.
1-8.701 Termination clause for fixed-price contracts.
1-8.702 Termination clause for cost-reimbursement type contracts.
1-8.703 Termination clause for fixed-price construction contracts.
1-8.704 Research and development contracts with educational and other nonprofit institutions.
1-8.704-1 Termination clause.
1-8.704-2 Suggested clause for subcontracts.
1-8.705 Short-form termination for convenience clauses for fixed-price type contracts.
1-8.705-1 Contracts for supplies or services.
1-8.705-2 Construction contracts.
1-8.706 Subcontract termination clause.
1-8.707 Default clause for fixed-price supply contracts.
1-8.708 Excusable delays clause for cost-reimbursement type contracts.
1-8.709 Default clause for fixed-price construction contracts.
1-8.709-1 Long-form clause.
1-8.709-2 Short-form clause.
1-8.710 Default clause for fixed-price research and development contracts.

Subpart 1-8.8—Formats of Notices, Forms, Warranties, and Agreements

1-8.800 Scope of subpart.
1-8.801 Notice of termination for convenience of the Government.
1-8.801-1 Telegraphic notice.
1-8.801-2 Letter notice.
1-8.802 Formats of settlement proposal forms.
1-8.802-1 Format 802-1, Settlement Proposal (Inventory Basis)—fixed-price type contracts.
1-8.802-2 Format 802-2, Settlement Proposal (Total Cost Basis)—fixed-price type contracts.
1-8.802-3 Format 802-3, Settlement Proposal (Short Form)—fixed-price type contracts.
1-8.802-4 Format 802-4, Settlement Proposal for Cost-Reimbursement Type Contracts.
1-8.803 Formats of inventory schedules.
1-8.803-1 Format 803-1, Inventory Schedule A (Metals in Mill Product Form).
1-8.803-2 Format 803-2, Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form).
1-8.803-3 Format 803-3, Inventory Schedule B.
1-8.803-4 Format 803-4, Inventory Schedule B—Continuation Sheet.
1-8.803-5 Format 803-5, Inventory Schedule C (Work in Process).
1-8.803-6 Format 803-6, Inventory Schedule C—Continuation Sheet (Work in Process).
1-8.803-7 Format 803-7, Inventory Schedule D (Dies, Jigs, Fixtures, etc., and Special Tools).
1-8.803-8 Format 803-8, Inventory Schedule D—Continuation Sheet (Dies, Jigs, Fixtures, etc., and Special Tools).
1-8.803-9 Format 803-9, Termination Inventory Schedule E (Short Form for Use with Format 802-3 Only).
1-8.804 Formats of miscellaneous forms.
1-8.804-1 Format 804-1, Schedule of Accounting Information.
1-8.804-2 Format 804-2, Application for Partial Payment.
1-8.805 Scrap warranty.
1-8.806 Formats of settlement agreement.
1-8.806-1 Settlement agreement for use in settling fixed-price prime contracts after complete termination.
1-8.806-2 Settlement agreement for use in settling fixed-price prime contracts after partial termination.
1-8.806-3 Partial settlement agreement, for use in settling fixed-price prime contracts after complete or partial termination where settlement pertains only to settlements with subcontractors.
1-8.806-4 Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement includes costs.
1-8.806-5 Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement is limited to fee.
1-8.806-6 No-cost settlement agreement—partial termination.
1-8.806-7 No-cost settlement agreement—complete termination.

AUTHORITY: The provisions of this Part 1-8 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1-8.000 Scope and applicability of part.

(a) This part sets forth policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government or for default, and sets forth policies and procedures relating to the settlement of claims arising therefrom. It includes contract clauses, with respect to termination and excusable delay, and suggested formats of notices, forms, warranties, and agreements related to the termination and settlement of contracts.

(b) This part applies to contracts which initially or by amendment provide for termination for the convenience of the Government or for the default of the contractor, whether or not the clauses in the contract with respect to termination are those set forth in Subpart 1-8.7. However, to the extent that clauses actually used in contracts are inconsistent with the provisions of this part, the provisions of the clauses actually used shall control. Where a termination for convenience clause has not been included in a contract, this part may also be used for guidance in negotiating a settlement agreement, or in making an equitable adjustment (see § 1-8.601 (c)).

(c) This part also applies to the disposal of contractor inventory arising out of any modification of a cost-reimbursement type contract pursuant to the Changes clause.

(d) When the head of a procuring activity so authorizes, the provisions of this part may be utilized:

(1) In determining any equitable adjustment as a result of modification of any contract, other than a cost-reimbursement type contract, pursuant to the Changes clause;

(2) In the disposal of any property which has become obsolete or excess for any reason under a contract whenever the cost of such property is made the basis of a claim by the contractor against the Government; or

(3) In the disposal of contractor inventory generally.

Subpart 1–8.1—Definition of Terms

§ 1–8.101 Definitions.

As used in this part, the following terms have the meanings stated:

(a) "Amount of claim" or "amount of settlement" means that amount which (1) does not have deducted from the gross claim or settlement (i) credits for retention or other disposal of termination inventory allocated to the claim, (ii) credits for advance payments, and (iii) credits for partial payments (see § 1–8.212–1); but (2) does have deducted from the gross claim or settlement (i) the amount payable for completed articles or work at the contract price, and (ii) amounts payable for the settlement or discharge of termination claims of subcontractors. (This definition applies only when the taking of an action depends upon the amount of a termination claim or settlement; e.g., the amount which determines whether audit of a prime contract claim is required, or the amount which determines whether a settlement must be reviewed by a settlement review board.)

(b) "Common items" means materials which are common in nature to both the terminated contract and the contractor's other work.

(c) "Continued portion of the contract" means that portion of a partially terminated contract which relates to work or end items not already completed and accepted prior to the effective date of termination and which the contractor must continue to perform.

(d) "Contractor-acquired property" means property procured or otherwise provided by the contractor for the performance of a contract, whether or not the Government has title by the terms of the contract or exercises its contractual right to take title.

(e) "Contractor inventory" means (1) any property acquired by and in the possession of a contractor or subcontractor (including Government-furnished property) under a contract pursuant to the terms of which title is vested in the Government, and in excess of the amounts needed to complete full performance under the entire contract; and (2) any property which the Government is obligated to or has an option to take over under any type of contract as a result either of any changes in the specifications or plans thereunder or of the termination of such contract (or subcontract thereunder), prior to completion of the work, for the convenience or at the option of the Government.

(f) "Effective date of termination" means the date upon which the notice of termination first requires the contractor to stop performance, in whole or in part, under the contract. If, however, the termination notice is received subsequent to the date fixed for termination, then the effective date of termination means the date on which the notice is received.

(g) "Government-furnished property" means property in the possession of or acquired directly by the Government, and subsequently delivered or otherwise made available to the contractor.

(h) "Government property" means all property owned by or leased to the Government or acquired by the Government under the terms of a contract; except that property to which the Government has acquired a lien or title solely as a result of partial, advance, or progress payments shall not be classified as Government property. With this exception, Government property includes (1) Government-furnished property, and (2) that part of contractor-acquired property title to which is vested in the Government.

(i) "Material" means property which may be incorporated into or attached to an end item to be delivered under a contract or which may be consumed or expended in the performance of a contract. It includes, but is not limited to, raw and processed material, parts, components, assemblies, and small tools and supplies which may be consumed in normal use in the performance of the contract.

(j) "Other work" means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

(k) "Plant clearance period" means, for each particular property classification (such as raw materials, purchased parts, and work in process) at any one plant or location, a period beginning with the effective date of the termination for convenience and ending 90 days after receipt by the contracting officer of acceptable inventory schedules covering all items of that particular property classification in the termination inventory at that plant or location, or ending on such later date as may be agreed to by the contracting officer and the contractor. Final phase of a plant clearance period means that part of a plant clearance period which occurs after the receipt of acceptable inventory schedules covering all items of the particular property classification at the plant or location.

(l) "Plant equipment" means personal property of a capital nature (consisting of machinery, equipment, furniture, vehicles, machine tools, and accessory and auxiliary items, but excluding special tooling) used or capable of use in the manufacture of supplies or in the performance of services or for administrative or general plant purpose.

(m) "Prime contract" means any contract as defined in § 1–1.208 entered into by any executive agency.

(n) "Production equipment" means those items of plant equipment which are located within a manufacturing, processing, assembly, or service establishment, and which are used for cutting, abrading, grinding, shaping, forming, joining, measuring, testing, heating, or treating production materials or work in process.

(o) "Salvage" means property which, because of its worn, damaged, deteriorated, or incomplete condition, or because of its specialized nature, has no reasonable prospect of sale or use as serviceable property without major repairs or alterations but which has some value in excess of its scrap value.

(p) "Scrap" means property which has no reasonable prospect of being sold except for the recovery value of its basic material content.

(q) "Serviceable or usable property" means property which has reasonable prospect of further use or sale either in its existing form or with minor repairs or alterations.

(r) "Settlement agreement" means a written agreement, in the form of an amendment to the contract, between the contractor and the Government settling all or a severable portion of a settlement proposal.

(s) "Settlement proposal" means a termination claim submitted by a contractor or subcontractor in the form, and supported by the data, required by this Part 1–8.

(t) "Special machinery and equipment" means that part of plant equipment which was acquired or constructed solely for the performance of the terminated contract or the terminated contract and other Government contracts, and as to which the contractor claims loss of useful value.

(u) "Special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include—(1) items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (2) consumable small tools, or (3) general or special machine tools, or similar capital items.

(v) "Subcontract" means any contract, as defined in § 1–1.208, other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

(w) "Termination claim" means any claim by a contractor or subcontractor, permitted by the terms of a prime contract, for compensation for the termination, in whole or in part, of the prime contract or a subcontract thereunder, and any other claim which this Part 1–8 authorizes to be asserted and settled in connection with a termination settlement.

(x) "Termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the terminated contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, material, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property.

(y) "Terminated portion of the contract" means that portion of a terminated contract which relates to work or end items not already completed and accepted prior to the effective date of termination and which the contractor is not to continue to perform.

Subpart 1–8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed-Price Type and Cost-Reimbursement Type Contracts

§ 1–8.200 Scope of subpart.

This Subpart 1–8.2 deals with general principles applicable to the termination and to the settlement of both fixed-price type and cost-reimbursement type contracts terminated for the convenience of the Government. Additional principles applicable to the settlement of fixed-price and cost-reimbursement types of contracts, terminated for convenience, are set forth in Subparts 1–8.3 and 1–8.4, respectively.

§ 1–8.201 General.

(a) Contracts shall be terminated for the convenience of the Government when it is determined that such action is in the best interest of the Government, or under the circumstances provided in § 1–8.601(b).

(b) A well-drafted termination for convenience clause defines the rights of the Government and of the contractor in a termination of the contract for the convenience of the Government and provides for the settlement of claims thereunder. Thus, the contractual right to terminate a contract for the convenience of the Government and to make a settlement agreement (as defined in § 1–8.101 (r)) is based on such a clause. However, the power of a contracting activity to issue a termination notice does not depend on the existence of a termination for convenience clause in the contract. In the absence of a termination for convenience clause, however, such action normally constitutes a breach of contract. Such a breach of contract may subject the Government to liability for common-law damages, including anticipatory profits, unless the Government arrives at a voluntary settlement with the contractor.

(c) A contract which initially does not provide for termination for the convenience of the Government may, with the consent of the contractor, be amended either prior to or after termination to incorporate such a clause. Even though a contract is not so amended, a settlement agreement may be entered into after termination of the contract.

§ 1–8.202 Notice of termination.

(a) Contracts shall be terminated for convenience only by a written notice to the contractor (see § 1–8.801 for suggested formats of notices of termination for convenience), stating:

(1) That the contract is being terminated for the convenience of the Government (citing the appropriate contract clause, if any, authorizing such termination);

(2) The effective date of termination;

(3) The extent of termination and, if a partial termination, the portion of the contract to be continued; and

(4) Any special instructions.

(b) A copy of the notice of termination shall be sent to each known assignee, guarantor, or surety of the contractor.

§ 1–8.203 Methods of settlement.

Settlement of cost-reimbursement type contracts and of fixed-price type contracts terminated for convenience may be effected by (a) negotiated agreement, (b) determination by the contracting officer, (c) costing out under proper invoices or vouchers (in the case of costs under cost-reimbursement type contracts), or (d) a combination of these methods. Every effort shall be made to reach a fair and prompt settlement with the contractor. The negotiated agreement is the most expeditious and most satisfactory method of settling termination claims and shall be used whenever feasible. Settlement by determination shall be used only when a termination claim cannot be settled by agreement.

§ 1–8.204 Duties of prime contractor after receipt of notice of termination.

After receipt of the notice of termination, the contractor must comply with the termination clause of the contract and the notice of termination, except as otherwise directed by the contracting officer under the authority of the clause. The clause and the notice generally should require, among other things, that the contractor:

(a) Stop work on the terminated portion of the contract and discontinue placing subcontracts thereunder;

(b) Terminate all subcontracts related to the terminated portion of the prime contract;

(c) Immediately advise the contracting officer of any special circumstances precluding the stoppage of work;

(d) If the termination is partial, perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price with respect to the continued portion of the contract, supported by evidence of any increase in the cost thereof;

(e) Take such action as may be necessary, or as the contracting officer may direct, to protect and preserve property in the possession of the contractor in which the Government has or may acquire an interest; and, to the extent directed by the contracting officer, deliver such property to the Government;

(f) Promptly notify the contracting officer in writing of any legal proceedings against the contractor growing out of any subcontract or other commitment related to the terminated portion of the contract;

(g) Settle all outstanding liabilities and all claims arising out of termination of subcontracts, obtaining any approvals or ratifications required by the contracting officer;

(h) Promptly submit his own settlement proposal, supported by appropriate schedules; and

(i) Dispose of any termination inventory, as directed or authorized by the contracting officer.

§ 1–8.205 Duties of contracting officer after issuance of notice of termination.

(a) In accordance with the termination clause in the contract and with the notice of termination, the contracting officer shall, among other things:

(1) Direct the action required of the prime contractor;

(2) Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;

(3) Promptly negotiate settlement with the contractor and enter into a settlement agreement; and

(4) To the extent that he is unable to negotiate settlement after due and diligent effort, promptly settle the contractor's claim by determination.

(b) To expedite settlement, the contracting officer shall seek assistance from specially qualified personnel (such as legal, accounting, inspecting, engineering, and property disposal personnel) so that such personnel may:

(1) Assist in dealings with the contractor;

(2) Render advice on legal and contractual matters;

(3) Conduct accounting reviews and render advice and assistance on accounting matters; and

(4) Perform the following functions with respect to the termination inventory—

(i) Verify its existence;

(ii) Determine qualitative and quantitative allocability;

(iii) Make recommendations concerning serviceability and unserviceability;

(iv) Undertake necessary screening and redistribution; and

(v) Assist the contractor in accomplishing other disposition.

(c) An initial conference shall be held with the contractor as promptly as possible to develop a definite program for effecting the settlement. Where appropriate in the judgment of the contracting officer after consulting the prime contractor, principal subcontractors should be present. Topics discussed at the conference should include:

(1) General principles relating to the settlement of any termination claim, including obligations of the contractor under the termination clause of the contract;

(2) Extent of the termination, point at which work is stopped, and status of any plans, drawings, and information which would have been delivered had the contract been completed;

(3) Status of any continuing work;

(4) Obligation of the contractor to terminate subcontracts and general principles to be followed in settlement of subcontractor claims;

(5) Names of subcontractors involved and the respective dates termination notices were issued to them;

(6) Contractor personnel handling, and methods for, review and settlement of subcontractor claims;

(7) Arrangements for transfer of title and delivery to the Government of any material required by the Government;

(8) General principles and procedures to be followed in the protection, preservation, and disposition of contractor's and subcontractors' termination inventories, including the preparation of termination inventory schedules;

(9) Contractor accounting practices and submission of accounting data (see § 1–8.307–1(c));

(10) Form in which settlement proposals shall be submitted;

(11) Accounting review of settlement proposals;

(12) Any requirement for interim financing in the nature of partial payments; and

(13) Tentative time schedule for negotiation of the settlement, including submission by the contractor and subcontractors of settlement proposals, termination inventory schedules, and accounting information schedules.

§ 1–8.206 Fraud or other criminal conduct.

Whenever the contracting officer has reason to suspect fraud or other criminal conduct in connection with the settlement of a terminated contract, he shall discontinue all negotiations with the contractor and shall report the facts in accordance with agency procedures.

§ 1–8.207 Accounting review of prime contract settlement proposals and of subcontract settlements.

(a) Each settlement proposal submitted by a prime contractor shall be referred by the contracting officer to the agency audit office for appropriate examination and recommendation when the amount of claim (see § 1–8.101(a)) is $2,500 or over. The contracting officer may, when circumstances indicate the necessity therefor, refer a settlement proposal to the agency audit office when the amount of claim is less than $2,500. The referral shall be in writing, shall indicate any specific information or data which the contracting officer desires to have developed, and shall include any facts or circumstances within the knowledge of the contracting officer which will assist the agency audit office in the performance of its function. The agency audit office should develop such information and should make such further accounting review as it deems appropriate. The agency audit office should submit written comments and recommendations to the contracting officer, in accordance with agency procedures.

(b) Subcontract settlements submitted by a contractor to the contracting officer for approval or ratification in accordance with § 1–8.208 shall be referred to the agency audit office for review and recommendations if (1) the amount of settlement is $25,000 or more, unless an accounting review of the settlement proposal has been performed by the agency audit office, or (2) the contracting officer considers an accounting review, in whole or in part, desirable. The review under (1) or (2) does not relieve the prime contractor or higher tier subcontractor of the responsibility for performing an accounting review. The agency audit office should submit written comments and recommendations to the contracting officer, in accordance with agency procedures.

(c) (1) The responsibility of the prime contractor and of each subcontractor, set forth in § 1–8.208–1, for settlement of immediate subcontractors' settlement proposals includes responsibility for performing accounting reviews and any necessary field audits. However, in the situations outlined in (i) through (iv) of this § 1–8.207(c)(1), the agency audit office generally should be requested to perform the accounting review of a subcontractor's settlement proposal where:

(i) A subcontractor objects to an accounting review of his records by an upper tier contractor for competitive reasons;

(ii) The agency audit office currently is performing audit work at the subcontractor's plant, or where it can be performed more economically or efficiently;

(iii) Audit by the agency audit office is necessary for consistent audit treatment and orderly administration; or

(iv) The contractor has a substantial or controlling financial interest in the subcontractor.

(2) Duplication by the agency audit office of accounting reviews performed by the upper tier contractor on subcontractor settlement proposals should be avoided to the extent possible. However, when appropriate, the Government should make additional reviews. Where the contractor is performing accounting reviews in accordance with this § 1–8.207, the contracting officer should request the agency audit office to examine periodically the contractor's accounting review procedures (including but not limited to audit programs, cost principles applied, working papers, and audit reports) and performance thereunder and make such comments and recommendations to the contracting officer as may be deemed appropriate.

§ 1–8.208 Settlement of subcontract claims.

§ 1–8.208–1 Subcontractor's rights.

Unless otherwise specifically provided, a subcontractor has no contractual rights against the Government upon the termination of a prime contract. The rights of a subcontractor are against the prime contractor or intermediate subcontractor with whom he has contracted. Upon termination of a prime contract, the prime contractor and each subcontractor are responsible for the prompt settlement of the termination claims of their immediate subcontractors.

§ 1–8.208–2 Prime contractor's rights and obligations.

Each termination for convenience clause provides that, after receipt of a notice of termination, the prime contractor shall (except as otherwise directed by the contracting officer) terminate all subcontracts to the extent that they relate to the performance of any work terminated by a notice of termination. Prime contractors should, for their own protection, include a termination clause in their subcontracts. A suggested subcontract termination clause is set forth in § 1–8.706. The failure of a prime contractor to include an appropriate termination clause in any subcontract, or to exercise his rights thereunder, shall not (a) affect the right of the Government to require the termination of the subcontract, or (b) increase the obligation of the Government beyond that which would have arisen if the subcontract had contained an appropriate termination clause. In any such case, the reasonableness of the prime contractor's settlement with the subcontractor should normally be measured by the aggregate amount which would be due under subparagraphs (1), (2), and (3) of paragraph (e) of the suggested subcontract termination clause. Reimbursement in excess of that amount shall be allowed only in unusual cases, and then only when the contracting officer is satisfied that the terms of the subcontract were negotiated in good faith and did not unreasonably increase the rights of the subcontractor.

§ 1–8.208–3 Settlement procedure.

(a) Settlements with subcontractors shall be made in general conformity with the policies and principles relating to settlement of prime contracts as set forth in this Subpart 1–8.2 and in Subparts 1–8.3 or 1–8.4, as applicable. However, the basis and form of the subcontractor's settlement proposal must be acceptable to the prime contractor or the next higher tier subcontractor. Each such settlement shall be supported by accounting and other data sufficient for adequate review by the Government. In no event shall the Government pay to the prime contractor any amount for loss of anticipatory profits or consequential damages resulting from the termination of any subcontract (but see § 1–8.208–5).

(b) Except as provided in § 1–8.208–4, (1) all subcontractor termination inventory shall be disposed of and accounted for in accordance with Subpart 1–8.5, and (2) the contracting officer shall require the prime contractor to submit to him for approval or ratification all termination settlements with subcontractors. In submitting each settlement, the prime contractor shall certify that he has examined the subcontractor's claims included therein, that they are allocable to the terminated portion of the prime contract (or are the result of a change order—see § 1–8.000(d)(1)), and that the settlement is fair and reasonable, was negotiated in good faith, and is not more favorable to the subcontractor than if the Government were not involved. The contractor shall also certify that he has received from all his immediate subcontractors certifications substantially in the form of his own certification. With respect to settlements with more remote subcontractors, the contractor shall certify that he has no information leading him to doubt their reasonableness or their allocability to the terminated portion of the prime contract.

(c) The contracting officer shall promptly examine each subcontract settlement required to be submitted to him (including the basis and form of the proposal upon which the settlement was based) to satisfy himself that the subcontract termination was made necessary by the termination of the prime contract (or by issuance of a change order—see § 1–8.000(d)(1)), and that the settlement was arrived at in good faith, is reasonable in amount, and is allocable to the terminated portion of the contract (or, if allocable only in part, that the proposed allocation is reasonable). In considering the reasonableness of any subcontract settlement, the contracting officer shall be guided generally by the provisions of this Part 1–8 relating to the settlement of prime contracts, and shall comply with any applicable requirements of §§ 1–8.207 and 1–8.211 relating to accounting and other reviews. Upon completion of the examination, the contracting officer shall notify the contractor in writing of (1) his approval or ratification, or (2) his reasons for disapproval.

§ 1–8.208–4 Authorization for subcontract settlements without approval or ratification.

(a)(1) The contracting officer may, upon the written request of the prime contractor, authorize him in writing to conclude settlements of his terminated subcontracts without approval or ratification by the contracting officer when the amount of settlement (see § 1–8.101(a)) is $10,000 or less and if:

(i) The contracting officer is satisfied with the adequacy of the procedures used by the contractor in settling termination claims (including proposals for retention, sale, or other disposal of termination inventory) of his immediate and lower tier subcontractors. (The contracting officer shall obtain the advice and recommendations of (A) the agency audit office with respect to the adequacy of the contractor's audit administration, including personnel, and (B) the cognizant disposal office with respect to the adequacy of the contractor's procedures and personnel for the administration of property disposal matters.);

(ii) Any termination inventory included in determining the amount of the settlement will be disposed of in accordance with § 1–8.513, except that the disposition of such inventory shall not (A) be subject to review by the contracting officer under § 1–8.513–1 or § 1–8.513–3, or (B) be subject to § 1–8.513–4; and

(iii) The settlement will be accompanied by a certificate substantially similar to the certificate contained in the appropriate settlement proposal format set forth in § 1–8.802.

(2) An authorization granted under (a)(1) of this § 1–8.208–4 may be exercised only in settling subcontracts which have been terminated as a result of termination for convenience or modification of the prime contract by the Government.

(b) Section 1–8.513 shall apply to any disposal of completed end items allocable to the terminated subcontract, except that completed end items allocable to the terminated subcontract may be disposed of without review by the contracting officer under § 1–8.513–1 or § 1–8.513–3, and without screening under § 1–8.513–4, if the total amount thereof (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under this § 1–8.208–4.

(c) A contracting officer granting the above authorization to a contractor shall be responsible for periodically making a selective review of settlements and settlement procedures to determine (1) whether the contractor is making adequate reviews and fair settlements, and (2) whether such authorization shall remain in effect. In connection with these periodic reviews, the contracting officer should obtain the advice and recommendations of the agency audit office with respect to the auditing aspects of the contractor's review procedures and those of the cognizant disposal office with respect to property disposal aspects of the contractor's review procedures. Whenever the contracting officer determines that the contractor's procedures are not adequate or that improper settlements are being made, he shall revoke the authorization by written notice to the contractor. The revocation shall take effect only from the date of receipt.

(d) Any number of separate settlements may be made with a single subcontractor. However, claims which normally would be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated wherever possible, and shall not be divided in order to bring them within an authorization.

(e) Upon written request of the contractor and with the prior written approval of the head of the procuring activity or of a deputy or principal assistant in the procuring activity responsible for contract matters, an authorization granted under (a)(1) of this § 1–8.208–4 may be increased to authorize the contractor to conclude settlements under a particular prime contract when the amount of settlement is more than $10,000 but not more than $25,000. Such authorization in excess of $10,000 may be

limited to specific subcontracts or classes of subcontracts.

§ 1–8.208–5 Recognition of judgments and arbitration awards.

(a) In the event a subcontractor obtains a final judgment against a prime contractor, the contracting officer shall, for the purposes of settling the prime contract, treat the amount of the judgment as a cost of settling with the subcontractor, to the extent such judgment is properly allocable to the terminated portion of the prime contract, if:

(1) The prime contractor has made reasonable efforts to include in his subcontract the termination clause in § 1–8.706 or a similar clause excluding payment of anticipatory profits or consequential damages;

(2) The provisions of the subcontract relating to the rights of the parties upon its termination, in whole or in part, are fair and reasonable and do not unreasonably increase the common law rights of the subcontractor;

(3) The contractor has made reasonable efforts to settle the claim of the subcontractor;

(4) The contractor has given prompt notice to the contracting officer of the initiation of the proceedings in which the judgment was rendered and has not refused to give the Government control of the defense of the proceedings; and

(5) The contractor has diligently defended the suit or, if the Government has assumed control of the defense of the proceedings, has rendered such reasonable assistance as has been requested by the Government.

(b) If the conditions stated in (1) through (5) of § 1–8.208–5(a) are not all met, the contracting officer may allow the contractor such part of the judgment as he considers a fair amount for settling the termination claim under the subcontract, giving due regard to the policies set forth in this Part 1–8 for settlement of such claims.

(c) Where a contractor and his subcontractor submit a subcontractor termination claim to arbitration under any applicable law or contract provision, the contracting officer shall recognize the amount of the arbitration award as the cost of settling the claim of the subcontractor to the same extent and under the same conditions as specified in (a) and (b) of this § 1–8.208–5.

§ 1–8.208–6 Delay in settlement of subcontractor claims.

Where a prime contractor is unable to settle with a subcontractor and such inability is delaying the settlement of the prime contract, the contracting officer may settle with the prime contractor, excepting from the settlement the whole or any part of the claim of such subcontractor and reserving the rights of the Government and of the prime contractor with respect thereto.

§ 1–8.208–7 Government assistance in settlement of contracts.

In unusual cases the contracting officer may determine that it is in the best interest of the Government to offer assistance to the prime contractor in the settlement of a particular subcontract. Such a situation may exist when the prime contractor has made all reasonable efforts to negotiate the settlement without success and the contracting officer believes that with the assistance of the Government a settlement can be reached. Such assistance shall be furnished only with the consent of the prime contractor. In such cases, the Government may concurrently approve an agreement entered into by the prime contractor and a subcontractor covering the settlement of one or more subcontracts. In any such case, payment to the subcontractor shall be effected through the prime contractor as part of the overall settlement with the latter.

§ 1–8.208–8 Assignment of rights under subcontracts.

(a) The termination for convenience clauses set forth in Subpart 1–8.7, except the short-form clauses, obligate the prime contractor to assign to the Government, in the manner, at the times, and to the extent directed by the contracting officer, all his right, title, and interest under any subcontracts terminated by reason of termination of the prime contract. The contracting officer shall not require such assignment unless he determines that it is in the best interest of the Government.

(b) In giving the Government the right to require the assignment of the prime contractor's interest in terminated subcontracts, the termination for convenience clauses set forth in Subpart 1–8.7 (except the short-form clauses) also provide that the Government shall have the right, in its discretion, to settle and pay any or all claims arising out of the termination of such subcontracts. This right does not obligate the Government to settle and pay termination claims of subcontractors. As a general rule, the prime contractor is obligated to settle and pay such claims. Where, however, the contracting officer determines that it is in the best interest of the Government to settle and pay direct a subcontractor's termination claim, he shall first obtain approval in accordance with agency procedures. An example of a situation in which the best interest of the Government would be served by effecting a direct settlement would be where a subcontractor is the sole source for a product and it appears that a delay by the prime contractor in settlement or payment of the subcontractor's claim would jeopardize the financial position of the subcontractor. Direct settlements with subcontractors are not encouraged.

§ 1–8.209 Settlement agreements.

§ 1–8.209–1 General.

When a settlement has been negotiated with respect to the terminated portion of a contract and all required reviews have been obtained, the contractor and the contracting officer shall enter into a settlement agreement, substantially in the appropriate format set forth in § 1–8.806. The settlement shall cover (a) any setoffs and counterclaims which the Government may have against the contractor and which may be applied against the terminated contract, and (b) all claims of subcontractors except claims which are specifically excepted from the agreement and reserved for separate settlement.

§ 1–8.209–2 Excepted items.

Where any rights or claims of the Government or of the contractor are to be excepted from the settlement, the settlement agreement shall specify the nature and extent of the excepted items. However, care shall be taken so that the wording of the exception does not create any new rights in the parties beyond those in existence prior to the execution of the settlement agreement. The separate settlement of excepted items shall be in accordance with the provisions of this Part 1–8 and shall be set forth in settlement agreements.

§ 1–8.209–3 Government property.

Before any settlement agreement is executed, the contracting officer shall determine the accuracy of the Government property account, if any, for the terminated contract. If the audit discloses property for which the contractor cannot account, the settlement agreement shall reserve the rights of the Government with respect to such property or make an appropriate deduction from the amount otherwise due the contractor.

§ 1–8.209–4 No-cost settlement.

(a) If no costs have been incurred by the contractor with respect to the terminated portion of the contract or if the contractor is willing to waive the costs incurred by him and if no amounts are due to the Government under the contract, a no-cost settlement agreement shall be executed substantially in the format set forth in § 1–8.806–6 or § 1–8.806–7, as applicable.

(b) Under a terminated cost-reimbursement type contract, the settlement agreement shall cover only the fee, if any, where the contractor has invoiced or vouchered out all costs within the period during which he may submit invoices or vouchers (see §§ 1–8.402(a) and 1–8.405–1).

§ 1–8.209–5 Partial settlements.

Every effort should be made by the contracting officer to settle in one agreement all rights and liabilities of the parties under the contract except those arising from any continued portion of the contract. Generally, contracting officers shall not attempt to make partial settlements covering particular items of the prime contractor's settlement proposal. However, when a contracting officer cannot promptly effect a complete settlement under the terminated contract, a partial settlement may be entered into if (a) the issues on which agreement has been reached are clearly severable from other issues, and (b) the partial settlement would not prejudice the interests of the Government or the contractor in disposing of the unsettled part of the claim.

§ 1–8.209–6 Joint settlement of two or more claims.

(a) With the consent of the contractor, a single settlement agreement may

be negotiated to cover the termination claims under two or more contracts, even though the contracts being terminated are with different bureaus or divisions within the contracting agency or with different contracting agencies.

(b) Such joint settlements shall be in accordance with arrangements made between the contracting offices.

(c) Each such joint settlement agreement shall (1) clearly identify the contracts involved; (2) apportion the total amount of the settlement among the several contracts on some reasonable basis; (3) have attached or incorporated therein a schedule showing the apportionment; and (4) be distributed and attached to each contract involved in the same manner as other contract amendments.

§ 1–8.209–7 Settlement by determination.

(a) *General.* To the extent that the contractor and contracting officer are unable to agree upon the settlement of a terminated contract or if a termination claim is not submitted within the period required by the termination clause in the contract, the contracting officer shall issue a determination of the amount due in accordance with the termination clause in the contract, including any cost principles incorporated therein by reference. The contracting officer shall comply with the applicable provisions of §§ 1–8.209–1 through 1–8.209–6 in making any such determination.

(b) *Notice to contractor.* Before issuing a determination of the amount due the contractor, the contracting officer shall give the contractor not less than 15 days' notice by certified mail (return receipt requested) to submit, on or before a stated date, written evidence substantiating the amount claimed to be due.

(c) *Submission of evidence.*

(1) The contractor has the burden of establishing, by proof satisfactory to the contracting officer, the amount claimed.

(2) The contractor may submit such vouchers, verified transcripts of books of account, affidavits, audit reports, and other documents, as he wishes. The contracting officer may request the contractor to submit such additional documents and data, and may cause such accounting, investigations, and audits to be made, as he deems appropriate.

(3) The contracting officer may accept photostatic or other copies of documents and records, without requiring original documents unless there is a question of authenticity.

(4) If the contractor wishes to confer with the contracting officer, or if the contracting officer wishes additional information from Government personnel or from independent experts, or wishes to consult persons whose affidavits or reports have been submitted, the contracting officer may, in his discretion, hold such conference as he deems appropriate.

(d) *Determinations.* After reviewing the information submitted or otherwise available to him, the contracting officer shall determine the amount due and shall transmit a copy of his determination to the contractor by certified mail (return receipt requested). The letter of transmittal shall advise the contractor that the determination is his final decision. In addition, the letter shall state whether or not an appeal may be taken under the Disputes clause (see (f) of this § 1–8.209–7). The determination shall set forth the amount due the contractor and shall be supported by detailed schedules, additional information, and analyses, as appropriate. An adequate explanation shall be given for each major item of disallowance. The contracting officer need not reconsider (1) any settlement with a subcontractor, (2) any disposition of property, or (3) any other action relating to the terminated portion of the contract, where such settlement, disposition, or other action has been previously ratified or approved by him or another duly authorized contracting officer.

(e) *Preservation of evidence.* The contracting officer shall retain in appropriate files of the contracting agency all written evidence and other data or copies thereof, relied upon by him in making his determination, except that copies of original books of account need not be made. Books of account, together with other original papers and documents, shall be returned to the contractor within a reasonable time.

(f) *Appeals.* The contractor has a right of appeal, under the Disputes clause of the contract, from any settlement by determination, except that the contractor has no such right of appeal where he has failed to submit his settlement proposal within the time provided in the contract and has failed to request extension of such time. The pendency of an appeal shall not affect the authority of the contracting officer to settle the termination claim or any part thereof by a negotiated agreement with the contractor at any time before the appeal is decided.

§ 1–8.210 Contracting officer's negotiation memorandum.

The contracting officer shall, at the conclusion of the settlement negotiations, prepare and sign a memorandum setting forth the principal elements of the settlement for inclusion in the contract file and for the use of reviewing authorities, if any. If the settlement was negotiated on the basis of individual items, the contracting officer shall specify the factors considered with respect to each item. If the settlement was negotiated on an overall lump-sum basis, the contracting officer need not evaluate each item or group of items individually, but the total amount of the recommended settlement shall be supported in reasonable detail. The memorandum shall include explanations of matters as to which differences and doubtful questions were settled by agreement, and the factors taken into consideration in connection therewith, and any other manners which, in the opinion of the contracting officer, will assist reviewing authorities, if any, in understanding the basis for the settlement.

§ 1–8.211 Review and approval of proposed settlements.

§ 1–8.211–1 Settlement review boards.

Each agency shall provide for the review of proposed settlements as required in § 1–8.211–2 (a) and (b). The review shall be by a settlement review board (or other group created for that purpose) established on a permanent or temporary basis. More than one such board may be established if settlements are to be made at different locations, if personnel with different qualifications are needed for different contracts, or if for other reasons the establishment of more than one board is considered desirable. Each settlement review board should be composed of at least three qualified and disinterested employees. The membership of each board should include at least one lawyer and one accountant.

§ 1–8.211–2 Required review and approval.

(a) *When required.* Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by a settlement review board if:

(1) The amount of settlement (see § 1–8.101(a)), by agreement or determination, involves $50,000 or more;

(2) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract and (i) in the case of a complete termination, the fee, as adjusted, is $50,000 or more; or (ii) in the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is $50,000 or more;

(3) The head of the procuring activity concerned determines that a review of a specific case or class of cases is desirable; or

(4) The contracting officer, in his discretion, desires review by the settlement review board.

(b) *Level of review.* When the amount of settlement (see § 1–8.101(a)), by agreement or determination, is in excess of $1,000,000, the review and approval of the settlement shall be by a board at or above the level of the head of the procuring activity.

(c) *Submission of information.* The contracting officer shall, in accordance with agency procedures, submit to the settlement review board a statement of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of (1) the contractor's or subcontractor's settlement proposal, (2) the audit report, (3) the property disposal report and any required approvals in connection therewith, and (4) the contracting officer's memorandum explaining the settlement (see § 1–8.210). The board may, in its discretion, require the submission of additional information.

§ 1–8.211–3 Scope of review.

The function of a settlement review board is to determine the overall reasonableness of the proposed settlement

agreement or determination from the standpoint of protecting the Government's interest. The board may vary the scope and intensity of the review according to the size and complexity of the proposed settlement agreement or determination and any other relevant factors. It is not intended that the board examine in detail every element entering into the proposed settlement agreement or determination, but the board may inquire into selected elements of the proposed settlement agreement or determination to assure that it has been developed competently and is based on adequate information.

§ 1–8.211–4 Action by board.

The settlement review board shall give written notification to the contracting officer of its approval, disapproval, or other decision with respect to the proposed settlement agreement or determination. The notification may include an opinion with respect to the decision and any other matter considered in connection therewith. Failure of the board to furnish a decision as to any proposed settlement agreement or determination within 30 days after submission to the board of all information required pursuant to § 1–8.211–2(c) shall operate as an approval by the board.

§ 1–8.212 Payment.

§ 1–8.212–1 Partial payments upon termination.

(a) *General.* If the contract authorizes partial payments on termination claims prior to settlement, a fixed-price prime contractor, or a cost-reimbursement prime contractor whose settlement proposal includes costs, may request such partial payments at any time after submission of interim or final settlement proposals. A suggested format of a form to be used in applying for partial payment is set forth in § 1–8.804–2. Applications for partial payments shall be processed promptly. Partial payments to a subcontractor shall be made only through the prime contractor. No partial payments shall be made on account of profit or fee which may be claimed with respect to the terminated portion of the contract. In exercising his discretion as to the extent to which partial payments shall be made, the contracting officer shall consider the dili- the completed end items or termination gence of the contractor in settling with his subcontractors and in preparing his own claim.

(b) *Amount of partial payment.* Before approving any partial payment requested by the contractor, the contracting officer shall have made such accounting, engineering, or other specialized reviews as he deems proper of the data required in this Part 1–8 to be submitted in support of the contractor's settlement proposals. If such reviews and the contracting officer's examination of the data indicate that the requested partial payment is proper, the contracting officer may, in his discretion, authorize payments as follows:

(1) An amount up to 100 percent of the contract price, adjusted in accordance with § 1–8.306, for undelivered acceptable items completed prior to the termination date, or completed thereafter with the approval of the contracting officer, which are included in the contractor's settlement proposals pursuant to § 1–8.306;

(2) An amount up to 100 percent of the amount of any subcontract settlement effected and paid by the prime contractor, if the settlement has been approved or ratified by the contracting officer pursuant to § 1–8.208–3(c) or has been authorized pursuant to § 1–8.208–4;

(3) An amount up to 90 percent of the direct cost of termination inventory, including costs of raw materials, purchased parts, supplies, and direct labor;

(4) A reasonable amount, not to exceed 90 percent, of other allowable costs (including manufacturing and administrative overhead) allocable to the terminated portion of the contract and not included in (1), (2), or (3) of this § 1–8.212–1(b); and

(5) An amount up to 100 percent of partial payments made to subcontractors in conformity with this § 1–8.212–1(b).

(c) *Recognition of assignments.* Where an assignment of claims has been made under the contract, partial payments shall not be made to other than the assignee unless the parties to the assignment consent in writing to the payments.

(d) *Security for partial payments.* To the extent that any partial payment is made with respect to completed end items or for direct or indirect costs of termination inventory, the interests of the Government shall be protected by transfer of title to the Government of inventory concerned, or by the creation of a lien in favor of the Government, paramount to all other liens, on such completed end items or termination inventory, or by other means authorized by agency procedures.

(e) *Deductions in computing amount of partial payments.* There shall be deducted from the gross amount of any partial payment otherwise payable under § 1–8.212–1(b):

(1) All unliquidated balances of progress payments and advance payments (including interest thereon) theretofore made to the contractor and which are allocable to the terminated portion of the contract; and

(2) The amounts of all credits arising from the purchase, retention, or sale of property the costs of which are included in the application for partial payment.

(f) *Limitation on total amount: effect of overpayment.* The total amount of all partial payments shall not exceed the amount which will, in the opinion of the contracting officer, become due to the contractor by reason of the termination. If the total of partial payments made to the contractor should exceed the amount finally determined to be due the contractor on his termination claim, the overpayment shall be repayable to the Government on demand, together with interest computed at the rate of 6 percent per annum from the date such overpayment was received by the contractor to the date of repayment. However, no interest shall be charged for any such overpayment attributable to a reduction in the contract termination claim by reason of retention or other disposition of termination inventory, until 10 days after the date of such retention or disposition, or such later date as is set by the contracting officer because of the circumstances; and no interest shall be charged for overpayment under cost-reimbursement research and development contracts (without profit or fee to the contractor) if the overpayments are repaid to the Government within 30 days after demand.

(g) *Certification and approval of partial payments.* Partial payments in a specific amount shall be made on the basis of vouchers or invoices certified by the contractor. The certification shall include, in addition to any other provisions ordinarily required to be included in such certificate, the following:

The payment covered by this voucher is a partial payment on account of the Contractor's termination claim under contract No. _____.

The invoice or voucher, if proper, shall be approved by the contracting officer by noting thereon the following:

Payment in the amount of $_____ approved.

§ 1–8.212–2 Final payment upon termination.

(a) *Negotiated settlement.* At the time of execution of a settlement agreement, a voucher or invoice showing the amount agreed upon, less any portion previously paid, shall be prepared and processed for payment. A copy of the settlement agreement shall be attached to the voucher or invoice.

(b) *Settlement by determination.* In the event of a settlement by determination:

(1) If the contractor has not appealed the determination within the time allowed for appeal, a voucher or invoice showing the amount so determined to be due, less any portion previously paid, shall be prepared and processed for payment; or

(2) If the contractor has appealed the determination, a voucher or invoice showing the amount finally determined on such appeal to be due, less any portion previously paid, shall be prepared and processed for payment. Pending determination of any appeal, an invoice or voucher pursuant to (1) of this § 1–8.212–2(b) may be processed for payment, without prejudice to the rights of either party on the appeal.

(c) *Interest.* No interest shall be paid by the Government on the amount due under a settlement agreement or a settlement by determination.

§ 1–8.213 Cost principles applicable to the settlement of research and development contracts with educational institutions.

Subject to the general policies set forth in § 1–8.301, the cost principles and procedures set forth in Subpart 1–15.3 shall be used, in accordance with § 1–15.103 and Subpart 1–15.6, as a guide for the negotiation of settlements under fixed-price or cost-reimbursement type contracts for experimental, developmental, or research work with educational institutions.

Subpart 1–8.3—Additional Principles Applicable to the Settlement of Fixed-Price Type Contracts Terminated for Convenience

§ 1–8.301 General.

(a) A settlement should compensate the contractor fairly for the work done and the preparations made for the terminated portions of the contract, including an allowance for profit thereon which is reasonable under the circumstances. Fair compensation is a matter of judgment and cannot be measured exactly. In a given case, various methods may be equally appropriate for arriving at fair compensation. The application of standards of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.

(b) The primary objective is to negotiate a settlement by agreement. The parties may agree upon a total amount to be paid the contractor without agreeing on or segregating the particular elements of costs or profit comprising this amount.

(c) Cost and accounting data may provide guides, but are not rigid measures, for ascertaining fair compensation. In appropriate cases, costs may be estimated, differences compromised, and doubtful questions settled by agreement. Other types of data, criteria, or standards may furnish equally reliable guides to fair compensation. The amount of recordkeeping, reporting, and accounting, in connection with the settlement of termination claims, shall be kept to the minimum compatible with the reasonable protection of the public interest.

§ 1–8.302 Cost principles.

The principles set forth in the applicable subpart of Part 1–15, or in the corresponding agency regulations, shall be used as a guide for the evaluation of cost information in the negotiation of a termination settlement.

§ 1–8.303 Allowance for profit.

(a) *General.* Profit shall be allowed only on preparations made and work done by the contractor for the terminated portion of the contract but may not be allowed on the contractor's settlement expenses. Anticipatory profits and consequential damages shall not be allowed (but see § 1–8.208–5). Any reasonable method may be used to arrive at a fair profit, separately or as a part of the whole settlement.

(b) *Factors to be considered.* In the negotiation of profit, factors to be considered include:

(1) Extent and difficulty of the work done by the contractor as compared with the total work required by the contract; (however, engineering estimates of the percentage of completion ordinarily should not be required but, if available, should be considered);

(2) Engineering work, production scheduling, planning, technical study and supervision, and other necessary services;

(3) Efficiency of the contractor, with particular regard to (i) attainment of quantity and quality production, (ii) reduction of costs, and (iii) economy in the use of materials, facilities, and manpower;

(4) Amount and source of capital employed, and extent of risk assumed;

(5) Inventive and developmental contributions, and cooperation with the Government and other contractors in supplying technical assistance;

(6) Character of the business, including the source and nature of materials and the complexity of manufacturing techniques;

(7) The rate of profit which the contractor would have earned had the contract been completed;

(8) Character, extent, and difficulty of subcontracting, including selection, placement, and management of subcontracts, settlement of terminated subcontracts, and engineering, technical assistance, and other services rendered, but the profit shall not be measured by the amount of the contractor's payments to subcontractors for settlement of their termination claims; and

(9) The rate of profit both parties contemplated at the time the contract was negotiated.

(c) *Profit in settlements by determination.* The formula for determining profit, set forth in paragraph (e)(2)(iii) of the termination clause for fixed-price contracts (§ 1–8.701) and subparagraph (e)(1)(iii) of the clause for fixed-price construction contracts (§ 1–8.703), is applicable only to a settlement by determination (see § 1–8.209–7) and shall not be used in establishing the profit allowed in a settlement by negotiation.

§ 1–8.304 Adjustment for loss.

(a) In the negotiation or determination of any settlement, no profit shall be allowed if it appears that the contractor would have incurred a loss had the entire contract been completed. The amount of loss shall be negotiated or determined, and an adjustment in the amount of settlement shall be made as specified in (b) or (c) of this § 1–8.304. In estimating the cost to complete, consideration shall be given to expected production efficiencies and to other factors affecting the cost to complete.

(b) If the settlement is on an inventory basis (see § 1–8.307–2), the contractor shall not be paid more than the total of the amounts in (1) through (3) below, less all disposal credits and all unliquidated advance and progress payments previously made to the contractor under the contract:

(1) The amount negotiated or determined for settlement expenses;

(2) The contract price, as adjusted, for acceptable completed end items (see § 1–8.306); and

(3) The remainder of the settlement amount otherwise agreed or determined (not excluding the allocable portion of initial costs (see § 1–15.205–42(c)), reduced by multiplying that remainder by the ratio of (i) the total contract price to (ii) the total cost incurred prior to termination plus the estimated cost to complete the entire contract.

(c) If the settlement is on a total cost basis (see § 1–8.307–2), the contractor shall not be paid more than the total of the amounts in (1) and (2) below, less all disposal and other credits, all advance and progress payments, and all other amounts previously paid to the contractor under the contract:

(1) The amount negotiated or determined for settlement expenses; and

(2) The remainder of the total settlement amount otherwise agreed or determined, reduced by multiplying that remainder by the ratio of (i) the total contract price to (ii) that remainder plus the estimated cost to complete the entire contract.

§ 1–8.305 Deductions.

From the amount payable to the contractor under a settlement, there shall be deducted (a) the agreed price for any part of the termination inventory purchased or retained by the contractor, and the proceeds of sale of any materials sold by him which have not otherwise been paid or credited to the Government; (b) the fair value, as determined by the contracting officer, or any part of the termination inventory which, prior to transfer of title to the Government or to a buyer pursuant to Subpart 1–8.5, is destroyed, lost, stolen, or so damaged as to become undeliverable, except for normal spoilage or to the extent the Government has expressly assumed the risk of loss; and (c) such other amounts as appropriate in the particular case.

§ 1–8.306 Completed end items.

Promptly after the effective date of termination, the contracting officer (a) shall have all undelivered completed end items (1) inspected, and (2) accepted if they comply with the prime contract requirements; and (b) shall determine which accepted end items shall be delivered under the contract. The contractor shall invoice completed end items so accepted and delivered and be paid for them at the contract price in the usual manner. He shall not include such end items in his termination claim. Where completed end items, though accepted, are not to be delivered under the contract, the contractor shall include such end items in his settlement proposal at the contract price, appropriately adjusted for any saving of freight or other charges, together with any credits for their purchase, retention, or sale.

§ 1–8.307 Settlement proposals.

§ 1–8.307–1 Submission of settlement proposals.

(a) Subject to the provisions of the termination clause in the contract, the contractor shall promptly submit to the contracting officer a settlement proposal setting forth the amount claimed to be due by reason of the termination. The proposal shall be submitted within one year after the effective date of the termination or within one or more extensions thereof granted by the contracting officer.

(b) The settlement proposal shall cover all elements of the contractor's claim, including settlements with subcontractors. With the consent of the contracting officer, proposals may be filed in successive steps covering separate portions of a claim. Such interim proposals shall include all costs of a par-

ticular type, except as the contracting officer may authorize otherwise.

(c) A settlement proposal shall be in the form established by the procuring agency (see § 1–8.802 for suggested formats of forms), but shall be in reasonable detail supported by adequate accounting data and shall include a certificate substantially as contained in the appropriate settlement proposal format set forth in § 1–8.802. A suggested format of a form for obtaining accounting information is in § 1–8.804–1. Actual, standard (appropriately adjusted), or average costs, may be used in preparing settlement proposals if such costs are determined in accordance with generally recognized accounting principles consistently followed by the contractor. Where actual, standard, or average costs are not reasonably available, estimated costs may be used if the method of arriving at the estimates is approved by the contracting officer. A contractor shall not be required to maintain unduly elaborate cost accounting systems merely because his contracts may subsequently be terminated.

(d) If the total amount of claim is less than $2,500, a simplified settlement proposal form (see § 1–8.802–3) may be used. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract, shall be consolidated wherever possible and shall not be divided in such a way as to bring them below $2,500.

§ 1–8.307–2 Bases for settlement proposals.

(a) *General.* The preferred accounting basis for preparing the settlement proposal is the inventory basis, since the contractor must compute and set forth costs applicable to that portion of the contract which is terminated. However, if costs are so recorded in the contractor's books as to make it impossible to separate costs between completed units and work in process, it will not be possible to use the inventory basis; in which case the contracting officer may approve the total cost basis, which is a more indirect method of arriving at the contractor's costs applicable to the terminated portion of the contract. Termination claims shall not be submitted on any basis other than the inventory and total cost bases without the prior approval of the head of the procuring activity or his duly authorized representative.

(b) *Inventory basis.*

(1) Under the inventory basis the contractor shall claim only costs chargeable or allocable to that portion of the contract which is terminated, and the settlement proposal shall itemize separately:

(i) At purchase or manufacturing cost, each of the following—metals, raw materials, purchased parts, work in process, finished parts, components, dies, jigs, fixtures, and tooling;

(ii) Charges such as engineering costs, initial costs, and general and administrative costs;

(iii) Costs of settlements with subcontractors;

(iv) Settlement expenses; and

(v) Other proper charges.

(2) An allowance for profit (see § 1–8.303) or adjustment for loss (see § 1–8.304(b)) shall be made to complete the gross termination claim. All unliquidated advance and progress payments, and all disposal and other credits known when the proposal is submitted, shall then be deducted.

(c) *Total cost basis.*

(1) When use of the inventory basis is not practicable or will unduly delay settlement, the total cost basis may be used if approved in advance by the contracting officer.

(2) When the total cost basis is used under a complete termination, all costs incurred under the contract up to the effective date of termination shall be itemized and the costs of settlements with subcontractors and applicable settlement expenses shall be added. An allowance for profit (see § 1–8.303) or adjustment for loss (see § 1–8.304(c)) shall be made. The contract price for all end items which have been or are to be delivered and accepted shall be deducted. All unliquidated advance payments, unliquidated progress payments and disposal and other credits known when the proposal is submitted shall also be deducted.

(3) When the total cost basis is used under a partial termination, the settlement proposal shall not be submitted until completion of the continued portion of the contract. The settlement proposal shall be prepared in accordance with (2) of this § 1–8.307–2(c), except that all costs incurred to the date of completion of the continued portion of the contract shall be included.

§ 1–8.308 Limitation on settlements.

Exclusive of settlement costs, the total amount payable to the contractor on account of a settlement, whether through negotiation or by determination, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated.

Subpart 1–8.4—Additional Principles Applicable to the Settlement of Cost-Reimbursement Type Contracts Terminated for Convenience

§ 1–8.401 General.

Termination clauses for cost-reimbursement type contracts (see §§ 1–8.702 and 1–8.704) provide for the settlement of costs and of fee, if any. The provisions of the particular contract governing costs shall determine what costs are allowable.

§ 1–8.402 Discontinuance of invoices or vouchers.

(a) Where the contract has been completely terminated, the contractor shall not use invoices or Standard Form 1034 vouchers after the last day of the sixth month following the month in which the termination notice is effective; however, he may elect to discontinue the use of such invoices or vouchers at any time prior thereto. Where the contractor has invoiced or vouchered out all costs within the six-month period, his claim for fee, if any, may be submitted on a form of the type suggested in § 1–8.802–4 or by letter; but in either case the contractor must substantiate the amount of the fee he claims and submit an appropriate certification. The claim for fee must be submitted to the contracting officer within one year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract. When the use of invoices or vouchers has been discontinued, all uninvoiced or unvouchered costs and claim for fee, if any, shall thereafter be submitted in accordance with § 1–8.404.

(b) Where the contract has been partially terminated, the provisions of § 1–8.405 shall be applied.

§ 1–8.403 Notice to the General Accounting Office.

If the General Accounting Office does not make site audits of an agency's contracts, the contracting officer shall promptly send a copy of the notice of termination to the General Accounting Office; in addition, he shall advise that office of the date on which the six-month vouchering period will expire, or of the contractor's election to discontinue the use of invoices or vouchers prior to expiration of the six-month period. If site audits are conducted, such copy and information shall be included in the file available to the General Accounting Office.

§ 1–8.404 Procedure after invoices or vouchers are discontinued.

§ 1–8.404–1 Submission of settlement proposal.

The contractor shall submit a settlement proposal covering his costs and his claim, if any, for a fee. Such proposal shall be submitted to the contracting officer within one year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract. The proposal shall be submitted in the form required by the procuring agency (see suggested format of form in § 1–8.802–4), but shall include a certificate substantially as contained in the format set forth in § 1–8.802–4. The proposal shall contain only uninvoiced or unvouchered costs, and the contractor may not include in such proposal those costs which (a) have been finally disallowed by the contracting officer or the General Accounting Office, or (b) are the subject of a reclaim invoice or voucher, or any costs of a similar nature.

§ 1–8.404–2 Interim negotiations.

The contracting officer and the contractor shall proceed immediately to take all action required by the termination clause of the contract and by this Part 1–8 (including negotiation of settlements with fixed-price subcontractors), but no final settlement agreement shall be executed until there has been full compliance with § 1–8.404–5.

§ 1–8.404–3 Partial payments.

Requests for partial payments shall be made and processed in accordance with § 1–8.212–1.

§ 1–8.404–4 Adjustment of overhead costs.

(a) If the contract contains a negotiated overhead rate clause which provides for the negotiation of a final overhead rate and it appears that adjustment of overhead costs applicable to invoiced or vouchered costs under procedures established for determining negotiated final overhead rates will unduly delay final settlement, the contracting officer after obtaining appropriate information from the agency audit office may agree with the contractor:

(1) To negotiate the amount of overhead for the contract for the period for which fixed overhead rates have not previously been negotiated, based upon audit recommendations requested by the contracting officer for such purpose or utilize provisional rates for this period to expeditiously effect final settlement if the provisional rate appears reasonable; or

(2) That any overhead adjustment shall be reserved in the final settlement agreement, pending establishment of negotiated final overhead rates.

(b) Where an amount of overhead is negotiated pursuant to (a)(1) of this § 1–8.404–4, the contractor shall eliminate such overhead and the related direct costs on which it was based from the total overhead and base (direct) costs used to compute overhead for other contracts performed during the applicable accounting period.

§ 1–8.404–5 Information concerning previous cost invoices or vouchers.

Prior to proceeding with the settlement, the contracting officer, with the cooperation of the accounting office where the invoices or vouchers have been certified, shall determine the payments previously made under the contract and any General Accounting Office exceptions taken thereto.

§ 1–8.404–6 [Reserved]

§ 1–8.404–7 [Reserved]

§ 1–8.404–8 Final settlement.

(a) The contracting officer may proceed with completion of the settlement and execution of an appropriate settlement agreement at any time after development of the information required by § 1–8.404–5.

(b) The fee shall be adjusted as provided in § 1–8.406.

(c) The final settlement agreement may include all claims of the Government and of the contractor under the terminated contract, except that no amount may be allowed for any item of cost which is the subject of a General Accounting Office exception, either cleared by deduction or uncleared, or for any other item of cost of the same nature, unless a reclaim invoice or voucher covering such cost has been presented by the contractor and authorized by the General Accounting Office for payment.

(d) The provisions of the contract governing the types of reimbursable costs shall constitute the basis of negotiation; however, if an overall settlement of costs is agreed upon, agreement on each separate element of cost is not necessary. In appropriate cases, differences may be compromised and doubtful questions settled by agreement. An overall settlement shall not, under any circumstances, be made the means of reimbursing contractors for costs which, under the provisions of the contract, are clearly not allowable.

§ 1–8.405 Procedure for partial termination.

§ 1–8.405–1 General.

(a) In the event of a partial termination, the settlement shall be limited to adjustment of the fee, if any, in accordance with §§ 1–8.405–2 and 1–8.406, unless the contracting officer determines that:

(1) The terminated portion is clearly severable from the balance of the contract; or

(2) Performance of the contract is virtually complete, or that performance of any continued portion is only on subsidiary items or spare parts, or is otherwise not substantial.

(b) In the case of the exceptions in (a) of this § 1–8.405–1, the procedures in §§ 1–8.402, 1–8.403, and 1–8.404 are applicable.

§ 1–8.405–2 Submission of settlement proposal (fee only).

The contractor shall submit a settlement proposal which shall be limited to the amount of his claim, if any, for a fee. Such proposal shall be submitted to the contracting officer within one year from the effective date of termination, unless the period has been extended in accordance with the terms of the contract. The proposal may be submitted on a form of the type suggested in § 1–8.802–4 or by letter; but in either case the contractor must substantiate the amount of the fee he claims and submit an appropriate certification.

§ 1–8.405–3 Submission of invoices or vouchers.

In the event of a partial termination where settlement is limited to adjust-

ment of fee, if any, the contractor shall continue to submit by invoice or voucher all costs reimbursable under the contract, including (a) his own costs allocable to the terminated portion of the contract, (b) costs of settlements with subcontractors properly identified as such, and (c) applicable settlement expenses. The contractor shall not be reimbursed for costs of settlements with subcontractors unless the approvals or ratifications required pursuant to the contract have been obtained (see § 1–8.208).

§ 1–8.406 Adjustment of fee.

The adjusted fee to be paid, if any, shall be determined in the manner provided by the contract, generally based on percentage of completion of the contract or of the terminated portion thereof. Where this basis is used, factors such as the extent and difficulty of the work performed by the contractor (including but not limited to planning, scheduling, technical study, engineering work production and supervision, placing and supervising subcontracts to the extent reasonably required, and work performed by the contractor in (a) stopping performance, (b) settling claims of subcontractors, and (c) disposing of termination inventory) shall be compared with the total work required by the contract or by the terminated portion thereof. The ratio of costs incurred to the total estimated cost of performing the contract or the terminated portion thereof is only one factor in computing the percentage of completion of the contract. This percentage may be either greater or less than that indicated by the ratio of costs incurred, depending upon the evaluation by the contracting officer of the above factors and other relevant considerations.

Subpart 1–8.5—Disposition of Termination Inventory

§ 1–8.501 General.

§ 1–8.501–1 Methods of disposal.

Subject to the Government exercising its right under the termination clause in a contract to acquire title to, and require delivery of, any items of termination inventory, termination inventory shall be disposed of in the manner most favorable to the Government. As hereinafter set forth in this subpart 1–8.5, methods of disposal include purchase or retention by the prime contractor or subcontractor at cost; return to suppliers; utilization, donation, or sale (after screening as provided in § 1–8.505); and destruction or abandonment.

§ 1–8.501–2 General restrictions on contractor's authority.

The following general restrictions are in addition to specific restrictions set forth in this Subpart 1–8.5:

(a) The authority of a contractor to purchase, retain, or dispose of termination inventory or to authorize or approve a purchase, retention, or disposition by a subcontractor is subject to (1) any applicable Government restrictions on the disposition of property which is either classified for security reasons or is dangerous to public health, safety, or welfare, and (2) any contract provisions regarding the disposition of material subject to a lien.

(b) Contractors shall not sell termination inventory to persons known by them to be officers or employees of the Federal Government, except to the extent determined by the heads of the contracting agencies to be in the best interest of the Government and except under procedures and safeguards, prescribed by the heads of such agencies, adequate to preclude collusion and fraud.

(c) With respect to termination inventory, the authority of a higher tier contractor to approve a sale by a subcontractor or to approve a purchase or retention at less than cost by a subcontractor, and the authority of a subcontractor to sell with the approval of the next higher tier contractor or to purchase or retain such inventory at less than cost with the approval of the next higher tier contractor does not include (1) a sale without competitive bids by a subcontractor to the next higher tier contractor or to an affiliate of such contractor or of the subcontractor, or (2) a sale without competitive bids, or a purchase or retention at less than cost, by a subcontractor affiliated with the next higher tier contractor. Each such excluded sale, purchase, or retention requires the written approval of the contracting officer. A firm shall be considered to be affiliated with another firm if, by reason of stock ownership or otherwise, (1) they are under common control, or (2) there is any common interest between them which is sufficient to create a reasonable doubt that the bargaining between them is completely in the best interest of the Government.

§ 1–8.502 Contractor-acquired property.

§ 1–8.502–1 Purchase or retention at cost.

Subject to the requirement of §§ 1–8.502–3 and 1–8.510, contractors shall be encouraged to purchase or retain contractor-acquired property at cost. No part of the cost of property so purchased or retained shall be included in settlement proposals. In any instance in which a contractor purchases or retains any allocable contractor-acquired property for use in other continuing Government contracts or commercial operations, handling and transportation charges necessitated by the purchase or retention of such property may be included in the contractor's settlement proposal as "other costs", if such costs are reasonable. Where property purchased or retained is for use on a continuing Government contract and is not in excess of the quantitative requirements for completion of that contract, that property shall be considered properly allocable to the continuing contract if that contract is subsequently terminated, even though its procurement would otherwise constitute undue anticipation of production schedules. If, as a result of the purchase or retention of property from a terminated contract for use on a continuing Government contract, the contractor terminates subcontracts under the continuing Government contract, the charges incurred by reason of the termination of such subcontracts may be included in the termination claim under the terminated contract.

§ 1–8.502–2 Return of property to suppliers.

Subject to the requirement of §§ 1–8.502–3 and 1–8.510, contractors are authorized and shall be encouraged to return allocable quantities of contractor-acquired property to suppliers for full credit less the supplier's normal restocking charge, or 15 percent of cost, whichever is less. Contractors shall not include in their settlement proposals the cost of such property returned to suppliers in accordance with this paragraph. Contractors may include in their settlement proposals as "other costs" the transportation, handling, and restocking charges with respect to the property so returned.

§ 1–8.502–3 Cost-reimbursement type contracts.

Under cost-reimbursement type contracts, the contractor's right to purchase or retain contractor-acquired property at cost or to return such property to suppliers shall be subject to the approval of the contracting officer after adjustment of previously reimbursed costs for such property.

§ 1–8.503 Inventory schedules.

§ 1–8.503–1 Submission of inventory schedules.

(a) Inventory schedules shall be submitted in the form prescribed by the procuring agency (see § 1–8.803 for suggested formats of forms), but shall include a certificate substantially as contained in the inventory schedules set forth in §§ 1–8.803–1, 1–8.803–3, 1–8.803–5, and 1–8.803–7, or, if appropriate, substantially as contained in the inventory schedule set forth in § 1–8.803–9.

(b) As promptly as possible after receipt of a notice of termination, the prime contractor is required to submit inventory schedules to the contracting officer covering all items of termination inventory, including Government-furnished property; but, except where title to materials purchased by the contractor is vested in the Government, termination inventory purchased or retained at cost or returned to suppliers, pursuant to § 1–8.502, shall not be listed. Inventory schedules may be submitted prior to submission of the settlement proposal. Submission shall not be delayed in order to supply complete cost data on items of work in process where such data is not readily available. Partial schedules may be submitted from time to time when they cover substantial portions of a particular property classification in the termination inventory. Each schedule submitted shall be designated by the contractor as "partial" or "final."

§ 1–8.503–2 Separate schedules.

Separate sets of schedules shall be submitted (a) for contractor-acquired property, and (b) for Government-furnished property. Within each of those categories schedules shall be submitted for each property classification prescribed by the procuring agency.

§ 1–8.503–3 Inventory descriptions.

A commercial description, adequate for screening and disposal purposes, of each item having commercial value shall be included in the inventory schedules. Where any items of termination inventory bear a Government identification number, such number shall be listed on the inventory schedules. In the case of other items, the contractor shall furnish a description sufficient to enable the contracting officer to determine the proper disposition thereof. The contractor shall consult the contracting officer when in doubt as to the extent of description required. The contractor need not itemize material believed to be scrap or salvage if (a) such material is physically segregated in the contractor's plant, and (b) the contractor submits a statement describing the material generally, setting forth its approximate cost, and giving such other information as may be necessary for the contracting officer to determine whether the material is scrap or salvage. If the material is determined by the contracting officer to be scrap or salvage (see § 1–8.504), the contractor may make a single descriptive entry on an inventory schedule covering such material and indicating its approximate total cost.

§ 1–8.503–4 Inventory schedule certificate.

The certificate on the inventory schedules prescribed by the procuring agency (see § 1–8.503–1(a)) shall be executed by the contractor on each schedule submitted. The certificate, among other things, tenders to the Government title to the property listed therein, unless the Government already has title thereto.

§ 1–8.503–5 Common items.

Except for property delivery of which has been required by the Government and except for Government-furnished property, the contractor's inventory schedules shall not include any common items (as defined in § 1–8.101(b)) which are reasonably usable on other work of the contractor without loss to him. (See § 1–15.205–42(a).)

§ 1–8.503–6 Withdrawals from inventory schedules.

If at any time prior to final disposition any items of contractor-acquired property listed in the contractor's inventory schedules become reasonably usable on other work of the contractor without loss to him and that fact is known to the contractor, the contractor is required to purchase or retain such items at cost in accordance with § 1–8.502–1 or § 1–8.502–3, whichever is applicable, and to amend his inventory schedules and his settlement proposal accordingly. Upon notification to the contracting officer, the contractor may similarly purchase or retain at cost any other items of property included in his inventory schedules. Withdrawal of Government-furnished property included in inventory schedules is subject to approval by the contracting officer.

§ 1–8.503–7 Rejection and correction of inadequate schedules.

(a) *General.* Contracting officers shall cause to be verified, to the extent practicable, the physical count and condition of inventories, including Government-furnished property, listed on the contractor's inventory schedules. If any inventory schedule submitted by a contractor is found to be inadequate, the contractor shall be promptly notified and required to correct or supplement the schedule as to the items which are deficient. Inventory schedules shall not be rejected if the information contained therein is adequate for disposal purposes, even if complete cost data on work in process are not available. Rejection of an inventory schedule shall be limited where possible to specific items thereon and shall not necessarily render the entire schedule unacceptable.

(b) *Effect on plant clearance period.*

(1) Where only individual items on the inventory schedules covering all items of a particular property classification are in need of correction or amplification, the inventory schedules as submitted shall be considered acceptable for purposes of starting the final phase of a plant clearance period (see §1–8.101(k)). However, where the inadequacy of an inventory schedule requires the return of the entire schedule to the contractor for correction or revision, the final phase of the plant clearance period as to the property classification covered thereby shall not begin until acceptable final schedules covering that property classification have been submitted.

(2) The contracting officer shall, within 15 days after receipt of the final schedule, advise the contractor of any deficiencies apparent in the inventory schedule, or the schedules shall be deemed acceptable for purposes of starting the final phase of a plant clearance period. However, should substantial errors develop which were not apparent from the inventory schedules previously deemed acceptable, the final phase of a plant clearance period shall not be deemed to have commenced until corrected schedules have been submitted, unless the contracting officer determines that no unwarranted delay in disposal operations was occasioned thereby.

§ 1–8.504 Scrap and salvage.

§ 1–8.504–1 General.

Promptly after the submission of inventory schedules by the contractor, the contracting officer shall review, or cause to be reviewed, the contractor's treatment of any items of termination inventory as scrap or salvage (see § 1–8.503–3). The review shall include a careful examination of the inventory schedules and in appropriate cases physical inspection of the property involved. Prior to determining that such items are scrap or salvage, the contracting officer shall obtain such approvals as may be required by agency procedures. If the contracting officer determines that any of the materials listed by the contractor as scrap or salvage are serviceable or usable materials, the contractor shall, in accordance with such determination, submit revised inventory schedules (see § 1–8.503–7). Property which is determined to be scrap and which, by other Government regulations, is required to be segregated by alloy or otherwise, shall be so segregated by the contractor. Property determined to be scrap or sal-

vage may, with the approval of the contracting officer, be delivered to a Government agency, sold, or otherwise disposed of by the contractor in accordance with the provisions of § 1–8.505, § 1–8.507, § 1–8.508, or § 1–8.509. In appropriate cases, when approved by the contracting officer, such sales may be consolidated with the contractor's sales of scrap and salvage generated from his other work and, in such cases, the scrap warranty required by § 1–8.504–2 may be waived in the discretion of the contracting officer.

§ 1–8.504–2 Scrap warranty.

(a) If any termination inventory is sold as scrap, a scrap warranty, substantially as set forth in § 1–8.805, shall be obtained.

(b) Releases from liability under scrap warranties may be granted on behalf of the Government by the contracting officer if, as consideration for the release, the Government is paid the difference between (1) the price for which the material was sold as scrap, and (2) an amount, approved by the contracting officer, not less than that which the material would bring if it were sold at a fair and reasonable price for purposes other than use as scrap. Such releases shall be granted by the Government and the consideration paid to the Government, even though the contract containing the warranty was not made direct with the Government.

(c) In the event of resale of any material subject to a scrap warranty, the seller is required to obtain an appropriate scrap warranty from the purchaser thereof. Upon tender of the warranty to the Government, the seller shall be released by the Government from liability under his own warranty.

§ 1–8.505 Screening of serviceable or usable property.

Serviceable or usable property included in the contractor's inventory schedules shall be screened as required by Chapter III, Title I, Personal Property Management, Regulations of the General Services Administration, and as required by agency procedures. If, as a result of such screening, any item of serviceable or usable property is desired by any agency of the Government for stock, diversion to other contracts, or other purposes, the contracting officer shall direct the delivery of such property.

§ 1–8.506 Government-furnished property.

Government-furnished property included in termination inventory, return of which has not been required by the Government, may be disposed of in the same manner as other termination inventory. The contracting officer is required to approve all such dispositions and may specify methods for preparing and routing inventory schedules covering such property.

§ 1–8.507 Sale or other disposition of termination inventory.

§ 1–8.507–1 General.

The sale (including purchase or retention at less than cost) shall be consistent with section 304.00, Chapter IV, Title 1, Personal Property Management, Regulations of the General Services Administration.

§ 1–8.507–2 [Reserved]

§ 1–8.507–3 [Reserved]

§ 1–8.507–4 Proceeds of sale.

Proceeds of any sale are to be covered into the Treasury as miscellaneous receipts except where the contract or any subcontract thereunder authorizes the proceeds to be credited to the price or cost of the work covered by such contract or subcontract (40 U.S.C. 485 (a) and (e)). The clauses set forth in §§ 1–8.701, 1–8.702, 1–8.703, and 1–8.704–1 include provision for the proceeds of sale to be applied in reduction of any payments to be made to the contractor under the contract, or otherwise credited to the price or cost of the work covered by the contract, or paid in such manner as the contracting officer may direct. A similar provision is included in the clause, set forth in § 1–8.706, suggested for use by a contractor in making subcontracts.

§ 1–8.507–5 Applicability of antitrust laws.

Whenever any termination inventory which has or may cost the Government $3,000,000 or more (or any patents, processes, techniques, or inventions, irrespective of cost) is to be sold or otherwise disposed of to private interests, the agency concerned shall promptly notify the Attorney General and the Administrator of General Services of the proposed disposal and the probable terms or conditions thereof and shall include in the notification the information required by section 101.11, Chapter IV, Title 1, Personal Property Management, Regulations of the General Services Administration. Disposition shall not be made until the agency has received advice from the Attorney General as to whether, so far as he can determine, the proposed disposition would tend to create or maintain a situation inconsistent with the antitrust laws.

§ 1–8.507–6 Foreign contractor inventory.

The sale or other disposition of contractor inventory located in foreign countries shall be made in accordance with agency procedures established to implement Title IV, Federal Property and Administrative Services Act of 1949 (40 U.S.C. 511–514).

§ 1–8.508 Donations.

After utilization screening is completed but prior to being offered for sale or being otherwise disposed of in accordance with § 1–8.507, termination inventory may be donated for authorized purposes in accordance with Chapter IV, Title 1, Personal Property Management, Regulations of the General Services Administration, and with agency procedures.

§ 1–8.509 Destruction or abandonment.

(a) Termination inventory which is Government-furnished property or contractor-acquired property and which is not otherwise disposed of under this Part 1–8 may, in accordance with General Services Administration and agency regulations, be destroyed or abandoned; provided that the contracting officer has determined that it has no commercial value and no value to the Government, or that the estimated cost of its care and handling is greater than the probable sale price, or that because of its nature it constitutes a danger to public health, safety, or welfare. Any such determination shall be subject to review in accordance with § 1–8.512.

(b) Termination inventory which has been classified for security reasons, and which is not required for the Government's needs, shall, unless such classification is removed or changed by proper authority, be disposed of in accordance with applicable security regulations.

(c) No termination inventory shall be abandoned on the contractor's premises without the contractor's consent.

§ 1–8.510 Special machinery, tooling, and equipment.

Except as otherwise provided in the contract, if the settlement is to include any item of cost on account of special machinery and equipment, or special tooling, the contracting officer shall take appropriate steps to protect the Government's interest by:

(a) Requiring transfer of title to such property to the Government;

(b) Requiring the inclusion of such property in the contractor's inventory schedules, to be treated in the same manner as termination inventory; or

(c) In the event of purchase or retention by the contractor, making an equitable adjustment of the costs to be included in the settlement for such property, which adjustment shall take into account the rate of amortization thereon, the possible use thereof on other work of the contractor, the ultimate disposal value thereof, and any rights to be retained by the Government.

§ 1–8.511 Removal and storage.

§ 1–8.511–1 Special storage at the expense and risk of the contractor.

At any time during the plant clearance period, the contractor may, upon written notice to the contracting officer, store any items of termination inventory, not previously disposed of, in a warehouse or other storage location on or off his own premises, unless otherwise directed by the contracting officer within 10 days of the receipt by the contracting officer of such notice. Such storage shall in no way modify the responsibility of the contractor with respect to such property. The expense of such storage, including any removal incident thereto, shall be borne by the contractor, unless the contracting officer determines that such removal or storage is for the convenience of the Government.

§ 1–8.511–2 Storage at the expense and risk of the Government.

At any time after expiration of the plant clearance period, the contractor may submit to the contracting officer a list, certified as to quantity and quality, of any items of termination inventory not previously disposed of, exclusive of items the disposition of which has been

directed or authorized by the contracting officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than 15 days thereafter, the Government shall accept title to such items and remove them or enter into a written storage agreement covering the same; however, the list submitted shall be subject to verification by the contracting officer at the time of removal of the items or, if the items are stored, within 45 days from the date of submission of the list. Any adjustment necessary to correct the list as submitted shall be made prior to final settlement.

§ 1–8.512 Review of property disposal.

Property disposal matters shall be reviewed by a reviewing authority within the agency as provided in Chapter IV, Title 1, Personal Property Management, Regulations of the General Services Administration, and as may be further provided in agency procedures.

§ 1–8.513 Subcontractor termination inventory.

§ 1–8.513–1 General policy.

(a) The prime contractor and each subcontractor are primarily responsible for the disposition of the termination inventory of their respective next lower tier subcontractors, but all such disposals shall be subject to review by the contracting officer as provided in § 1–8.208–3(c) (but see § 1–8.208–4). The policies and provisions set forth in §§ 1–8.501, 1–8.502, 1–8.505, 1–8.506, 1–8.508, 1–8.509, and 1–8.512 shall be applicable in the case of subcontractors. Any rights which the prime contractor has or acquires in the termination inventory of his first tier or lower tier subcontractors shall, to the extent directed by the contracting officer, be exercised for the benefit of the Government, in accordance with the provisions of the contract between the Government and the prime contractor.

(b) Subcontractors in all tiers shall prepare inventory schedules in accordance with the requirements of this Part 1–8. Normally disposition instructions for termination inventory, except serviceable or usable property, will be furnished by the next higher tier subcontractor or the prime contractor, as the case may be. Each subcontractor may submit his next lower tier subcontractors' inventory schedules of serviceable or usable property directly to the contracting officer for review and disposition instructions, unless otherwise directed by the contracting officer. In the interest of expediting disposition of termination inventory, the cognizant contracting officer shall permit such direct submission, unless he determines that the submission of inventory schedules through all intermediate tiers of subcontractors is necessary in the best interest of the Government. When such a determination is made, it must be in writing and a copy submitted to the head of the procuring activity concerned for review.

§ 1–8.513–2 Inventory schedules.

With respect to termination inventory for which their subcontractors claim reimbursement, the prime contractor and each higher tier subcontractor shall obtain information substantially equivalent to that called for by § 1–8.503. In any event, full information on the condition and usability of such inventory shall be furnished, and certificates similar to those contained on the formats in § 1–8.803 shall be obtained from the subcontractor. For this purpose, forms similar to the formats of inventory schedules set forth in § 1–8.803 may be used.

§ 1–8.513–3 Scrap and salvage.

The prime contractor and each higher tier subcontractor shall review any recommendations of their respective subcontractors concerning scrap and salvage. If the prime contractor or the higher tier subcontractor determines that any of the materials are serviceable or usable materials, he shall require the subcontractor to submit revised inventory data in accordance with such determination. The Government shall not be bound by any determination that material is scrap or salvage unless the determination and any sale of the material as scrap or salvage have the prior approval of the contracting officer. A scrap warranty running to the Government shall be obtained wherever such material is sold as scrap.

§ 1–8.513–4 Serviceable or usable property.

Subcontractor termination inventory, which is not purchased or retained at cost and which is determined to be serviceable or usable property, shall be disposed of by:

(a) Submission for screening and possible redistribution within the Government or donation; or

(b) Sales to third parties (including purchases or retentions at less than cost by the subcontractor, a higher tier subcontractor, or the prime contractor) made in general conformity with § 1–8.507.

§ 1–8.514 Adjustment prior to final settlement.

§ 1–8.514–1 Duty of contractors to inform Government.

By the terms of the inventory schedule certificate contained on the formats set forth in § 1–8.803 (also see § 1–8.503–4), the contractor or subcontractor is required to inform the Government of any substantial change in the status of his termination inventory arising between the date of submission of his termination inventory schedules and final disposition of such inventory.

§ 1–8.514–2 Right of Government to review inventory schedules.

(a) Regardless of any disposition of termination inventory pursuant to this Subpart 1–8.5, the Government shall continue to have the right, prior to final settlement, to require additional information concerning such inventory, to contest its allocability to the terminated portion of the contract, or to exclude such inventory from the settlement on any proper grounds.

(b) If, prior to final settlement, the Government determines that any portion of the termination inventory is not allocable to the terminated contract or should be excluded from the settlement on any other grounds, the cost thereof, and any credits related thereto, shall be excluded from the settlement. If the contractor has actually paid to the Government the proceeds realized from the disposition of such inventory, the Government shall repay such proceeds to the contractor. If such inventory has been delivered to the Government, normally it should be returned to the contractor at the contractor's expense and risk.

§ 1–8.515 Accounting for termination inventory.

(a) Prior to final settlement with the prime contractor, all termination inventory of the prime contractor and his subcontractors must be accounted for as follows:

(1) By purchase or retention at cost by the contractor or subcontractor, or by return to suppliers, and omission or withdrawal of such inventory from the contractor's inventory schedules;

(2) By transfer to the Government;

(3) By donation (see § 1–8.508);

(4) By sale (including purchase or retention at less than cost by the contractor or subcontractor) and application of the proceeds or agreed value in reduction of the contractor's claim, or otherwise to the credit of the Government;

(5) By destruction or abandonment; or

(6) By other disposition in accordance with the terms of the contract and of this Part 1–8.

(b) In the event that any termination inventory not disposed of is lost, destroyed, damaged, or for any reason cannot be delivered by the contractor at the time of settlement of his termination claim, such termination inventory, unless the Government has expressly assumed the risk involved or unless the contract provides otherwise, shall be accounted for as inventory purchased or retained by the contractor, and the fair value of the inventory, as determined by the contracting officer, shall be deducted from the termination claim.

Subpart 1–8.6—Termination for Default

§ 1–8.600 Scope of subpart.

This subpart sets forth policies and procedures for the utilization and application of the Default clause set forth in § 1–8.707 for fixed-price supply contracts, the Termination for Default-Damages for Delay-Time Extensions clauses set forth in § 1–8.709 for fixed-price construction contracts, the Default clause set forth in § 1–8.710 for certain fixed-price research and development contracts, and the Termination for Default or for Convenience of the Government clause set forth in § 1–8.702 for cost-reimbursement type contracts. The scope of this subpart does not include default with respect to individual purchase orders issued under Federal Supply Schedule contracts, for which there are special instructions in section 303.03, Chapter II, Title I, Personal Property Management, Regulations of the General Services Administration.

§ 1–8.601 General.

(a) Termination for default is generally the exercise of a contractual right of the Government to terminate, in whole or in part, the contractor's right to proceed by reason of his failure, actual or anticipatory, to perform his obligations under the contract.

(b) If the contract provides for its termination for convenience of the Government and if, after issuance of a notice of termination for default under one of the clauses set forth in § 1–8.702, § 1–8.707, § 1–8.709–1, or § 1–8.710, it is determined for any reason that, under the provisions of the clause, the contractor was not in default or that the default was excusable, each of the clauses provides that the notice of termination shall be deemed to have been issued under the termination for convenience provisions of the contract, and that the rights and obligations of the parties shall be governed accordingly.

(c) If no termination for convenience clause is included in the contract and if, after issuance of a notice of termination for default, it is determined for any reason that the contractor was not in default or if, in connection with a construction contract, it is determined that the default was excusable, each of the clauses in §§ 1–8.707, 1–8.709–1, and 1–8.710 provides that the contract shall be equitably adjusted to compensate for such termination.

(d) Notwithstanding the provisions of (b) and (c) of this § 1–8.601, the contract may be reinstated by mutual agreement where the contracting officer determines that such reinstatement is in the best interest of the Government.

(e) In addition to the termination rights and remedies provided in the contract clauses set forth in §§ 1–8.702, 1–8.707, 1–8.709, and 1–8.710, the Government may in appropriate cases pursue termination or cancellation rights and remedies provided by law or by other clauses of the contract.

§ 1–8.602 Default termination of fixed-price supply contracts.

§ 1–8.602–1 The Government's right to terminate for default.

Under contracts containing the Default clause in § 1–8.707, the Government has the right, subject to the notice requirements of the clause with respect to (b) and (c) of this § 1–8.602–1, to terminate the whole or any part of the contract for default if the contractor (a) fails to make delivery of the supplies or to perform the services within the time specified in the contract, (b) fails to perform any other provision of the contract, or (c) fails to make progress so as to endanger performance of the contract.

§ 1–8.602–2 Effect of termination for default.

(a) Under a termination for default the Government is not liable for the contractor's costs on undelivered work, and is entitled to the repayment of any advance payments and of any progress payments applicable to such work. The Government may elect, pursuant to paragraph (d) of the Default Clause set forth in § 1–8.707, to require the contractor to transfer title and deliver to the Government completed supplies and manufacturing materials, in the manner and to the extent directed by the contracting officer. The contracting officer shall not use the Default clause as authority to acquire any completed supplies or manufacturing materials unless he has made certain that the Government does not already have title thereto under some other provision of the contract. In the event manufacturing materials are to be acquired by the Government under the authority of the Default clause for the purpose of furnishing the materials to any other contractor, the contracting officer shall take such action only after giving due consideration to the difficulties that such contractor may encounter in making use of the materials.

(b) Subject to the provisions of (c) of this § 1–8.602–2, the Government shall pay to the contractor the contract price for any completed supplies, and the amount agreed upon by the contracting officer and the contractor for any manufacturing materials, acquired by the Government pursuant to the Default clause.

(c) In order to protect the Government from overpayment for any completed supplies or manufacturing materials, that might result from failure to make provision for the Government's potential liability to laborers and materialmen for lien rights outstanding against such supplies or materials after the Government has paid the contractor therefor, the contracting officer shall take one or more of the following measures before making the payment referred to in (b) of this § 1–8.602–2:

(1) Ascertain whether the payment bonds, if any, furnished by the contractor are adequate to satisfy all lienors' claims; or whether it is feasible to obtain similar bonds to cover outstanding liens;

(2) Require the contractor to furnish appropriate statements from laborers and materialmen disclaiming any lien rights they may have to the supplies and materials;

(3) Obtain appropriate agreement by the Government, the contractor, and lienors assuring release of the Government from any potential liability to the contractor or lienors;

(4) Withhold from the amount otherwise due for the supplies or materials such amounts as the contracting officer determines to be necessary to protect the Government's interest, but only if the measures set forth in (1), (2), and (3) cannot be accomplished or are otherwise deemed inadequate;

(5) Take any other action the contracting officer deems appropriate, considering the particular circumstances and the degree of the contractor's solvency.

(d) The contractor is liable to the Government for any excess costs for supplies and services procured similar to those terminated (see § 1–8.602–6), and for any other damages, whether or not repurchase is effected (see § 1–8.602–7). However, where the failure to perform arises out of causes which are excusable under paragraph (c) of the clause set forth in § 1–8.707, the contractor shall not be liable for any excess costs.

§ 1–8.602–3 Procedure in case of default.

(a) Subparagraph (a)(i) of the Default clause covers situations where the contractor has in fact defaulted by failure to make delivery of the supplies or to perform the services within the time specified by the contract or any extension thereof. In such situations, no notice of failure by the contractor or of the possibility of termination for default is required by the terms of the clause to be sent to the contractor prior to the actual notice of termination. However, if the Government has taken any action which might be construed as a waiver of the contract delivery or performance date, a preliminary notice shall be sent the contractor setting a new date by which the contractor will be permitted to make delivery or complete performance, reserving the Government's rights under the Default clause. Dependent upon the circumstances in each case, such a preliminary notice (1) shall call the contractor's attention to his contractual liabilities should the contract be terminated for default under subparagraph (a)(i) of the clause, (2) may request an explanation of the contractor's failure, (3) may state that failure of the contractor to present such explanation may be taken as an admission that no valid explanation exists, and (4) may invite the contractor to discuss the matter at a conference.

(b) Subparagraph (a)(ii) of the Default clause covers situations in which the contractor fails to perform any of the other provisions of the contract (such as not furnishing a required performance bond) or so fails to make progress as to endanger performance of the contract in accordance with its terms. In either of such situations, the contracting officer must formally notify the contractor of such failure and allow at least 10 days for cure of the failure before

issuing a termination notice. Such notification shall set forth in concise but complete form all of the provisions of the contract which the contractor has failed to meet, or a summary of the findings which have demonstrated that the contractor has failed to make acceptable progress in the performance of the contract, or both. The extent of detail to be included will vary depending upon the nature and amount of previous correspondence with the supplier; but any such previous correspondence relied upon shall be specifically referenced in the preliminary notice. The preliminary notice (1) shall state that a notice of termination for default may be issued upon expiration of the 10-day (or longer) period unless the failure to perform or to make adequate progress toward performance has been cured, (2) shall call the contractor's attention to his contractual liabilities in the event the contract is terminated for default, (3) shall request an explanation of the contractor's failure to perform the contract, (4) may state that failure of the contractor to present such explanation may be taken as an admission that no valid explanation exists, and (5) may invite the contractor to discuss the matter at a conference.

(c) The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

(1) The provisions of the contract and applicable laws and regulations;

(2) The specific failure of the contractor and the excuses, if any, made by the contractor for such failure;

(3) The availability of the supplies or services from other sources;

(4) The urgency of the need for the supplies or services and the period of time which would be required to obtain the supplies or services from other sources as compared with the time in which delivery could be obtained from the delinquent contractor;

(5) The degree of essentiality of the contractor in the Government procurement program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts;

(6) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments;

(7) The availability of funds to finance repurchase costs which may prove to be uncollectible from the defaulted contractor, and the availability of funds to finance termination costs if the default is determined to be excusable; and

(8) Any other pertinent facts and circumstances.

(d) If, after compliance with the procedures in (a) through (c) of this § 1–8.602–3, the contracting officer determines that termination for default is proper, he shall issue a notice of termination which shall:

(1) Set forth the contract number and date;

(2) Describe the acts or omissions constituting the default;

(3) State that the contractor's right to proceed further with performance of the contract (or a specified portion of the contract) is terminated;

(4) If the contracting officer has not determined whether the failure to perform is excusable, state that the supplies or services terminated may be procured against the contractor's account, and that the contractor may be held liable for any excess costs;

(5) If the contracting officer has determined that the failure to perform is not exclusable, state that the notice of termination constitutes such decision and state that the contractor will be held liable for any excess costs, and also state that the contractor has the right to appeal such decision under the Disputes clause;

(6) State that the Government reserves all rights and remedies provided by law or under the contract, in addition to charging excess costs; and

(7) State that the notice constitutes a decision that the contractor is in default as specified and that the contractor has the right to appeal under the Disputes clause.

(e) The same distribution shall be made of the termination notice as was made of the contract. In addition, a copy shall be furnished to the surety, if any, and the procuring activity's fiscal office shall be advised to withhold further payments under the terminated contract pending addtional instructions which shall be given when sufficient information is available.

(f) If the contracting officer determines before issuance of the notice of termination that the contractor's failure to perform arose from causes beyond his control and without his fault or negligence and that termination is in the best interest of the Government, the contracting officer shall either terminate the contract for convenience where the contract contains a termination for convenience clause or terminate the contract for default, without assessing excess costs, where the contract does not contain a termination for convenience clause.

(g) If the contracting officer has not been able to determine, prior to issuance of the notice of termination, whether the contractor's failure to perform arose from causes beyond his control and without his fault or negligence, he shall make a written decision on that point as soon as practicable after issuance of the notice of termination. Such decision shall be delivered promptly to the contractor with a notification that he has the right to appeal the decision as specified in the Disputes clause. (See § 1–8.601(b) with respect to the situation where the contract contains a termination for convenience clause and the causes of the failure to perform are excusable.)

§ 1–8.602–4 Procedure in lieu of termination for default.

The following courses of action, among others, are available to the contracting officer in lieu of termination for default, when in the best interest of the Government:

(a) Permit the contractor, his surety, or his guarantor to continue performance of the contract under a revised delivery schedule;

(b) Permit the contractor to continue performance of the contract by means of a subcontract or other business arrangement with an acceptable third party, provided the rights of the Government are adequately preserved; or

(c) If the requirement for the supplies and services specified in the contract no longer exists and the contractor is not liable to the Government for damages as provided in § 1–8.602–7, execute a no-cost termination settlement agreement utilizing the formats set forth in §§ 1–8.806–6 and 1–8.806–7 as a guide.

§ 1–8.602–5 Documentation in contract file.

In all cases where a contract is terminated for default or where a procedure authorized by § 1–8.602–4 is followed, the contract file shall be well documented to explain fully the reasons for the action taken.

§ 1–8.602–6 Repurchase against contractor's account.

(a) Where the supplies or services are still required after termination and the contractor is liable for excess costs, repurchase of supplies or services which are the same as or similar to those called for in the contract shall be made against the contractor's account as soon as practicable after termination. Such repurchase shall be at as reasonable a price as practicable considering the quality required by the Government and the time within which the supplies or services are required. The contract of repurchase may be made for a quantity in excess of the undelivered quantity terminated for default, when such excess quantity is needed (so long as this does not result in paying a higher unit price than available for the undelivered quantity) but excess cost may be charged against the defaulting contractor for no more than the undelivered quantity terminated for default (including variations in quantity permitted by the terminated contract).

(b) If the repurchase is for a quantity not in excess of the undelivered quantity terminated for default, the legal requirements with respect to formal advertising are inapplicable. However, the contracting officer shall use formal advertising procedures except where there is good reason to negotiate. If the contracting officer decides to negotiate the repurchase contract, he shall note the reason in the contract file and shall identify the procurement as a repurchase in accordance with the provisions of the Default clause in the defaulted contract. If the repurchase is for a quantity in excess of the undelivered quantity terminated for default, for the purpose of determining whether advertising or negotiation should be used, the entire quantity shall be treated as new procurement.

(c) If repurchase is effected at a price in excess of the price of the supplies terminated, the contracting officer shall make a written demand on the contractor for the total amount of such excess, giving due consideration to any increases or decreases in other ascertainable costs such as transportation and discounts. If the contractor fails to make payment, the contracting officer shall follow

agency procedures for collecting claims in favor of the Government.

§ 1–8.602–7 Other damages.

(a) If a contract is terminated for default or if a course of action in lieu of termination for default is followed (see § 1–8.602–4), the contracting officer shall promptly ascertain and make demand for any liquidated damages to which the Government may be entitled under the contract. Pursuant to the contract provisions for liquidated damages in § 1–1.315–3, such damages are in addition to any excess cost of reprocurement.

(b) If the Government has suffered any other ascertainable damages as a result of the contractor's default, the contracting officer shall, on the basis of legal advice, take appropriate action to assert the Government's claim for such damages.

§ 1–8.603 Default termination of fixed-price construction contracts.

§ 1–8.603–1 Termination of the contractor's right to proceed.

Under contracts containing either of the Termination for Default-Damages for Delay-Time Extensions clauses set forth in § 1–8.709, the Government has the right, to the extent provided in such clauses, to terminate the contractor's right to proceed with the work, or any separable part thereof, if the contractor does not prosecute the work required by the contract with such diligence as will insure its completion, or fails to complete it, within the time specified in the contract or any extension thereof.

§ 1–8.603–2 Effect of termination for default.

If a contractor's right to proceed is terminated for default, the Government may take over and complete the work or cause it to be completed and the contractor and his sureties shall be liable to the Government for any increased costs caused thereby. If the contract contains the clause set forth in § 1–8.709–1, the contractor and his sureties shall, in addition to increased costs in completing the work, be liable for liquidated damages if liquidated damages are provided in the contract, or for actual damages if liquidated damages are not so provided.

§ 1–8.603–3 Procedure in case of default.

(a) The contracting officer shall consider the following factors in determining whether to terminate a contract for default:

(1) The provisions of the contract and applicable laws and regulations;

(2) The specific failure of the contractor and excuses, if any, made by the contractor for such failure;

(3) The period of time which would be required for the Government or another contractor to complete the work as compared to the time required for completion by the delinquent contractor;

(4) The effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments;

(5) The availability of funds to finance the increased cost to complete, to the extent that such costs may not be covered by surety protection, and the availability of funds to finance termination costs should it subsequently be determined that the delay was excusable; and

(6) Any other pertinent facts and circumstances.

(b) If the contracting officer determines that the contractor's failure to perform arises from causes which are excusable under the terms of the contract, the contracting officer shall not terminate the contractor's right to proceed, nor shall he charge the contractor with liquidated damages (or if no liquidated damages, then actual damages) because of any delays occasioned by such causes. See (b) and (c) of § 1–8.601 regarding action to be taken if the default is determined to be excusable after issuance of the notice of termination.

(c) If the contracting officer determines that termination for default is in the best interest of the Government, he shall promptly send a written notice to the contractor terminating his right to proceed. The notice shall:

(1) Set forth the contract number and date;

(2) Describe the act or omissions, and the extent of the resultant delay, constituting the default;

(3) State that the contractor's right to proceed further with performance of the contract (or of a specified portion of the contract) is terminated;

(4) State that the Government may cause the contract to be completed and that the contractor will be held liable for any increased costs;

(5) State that the Government reserves all rights and remedies provided by law or under the contract, in addition to charging increased costs;

(6) State that the notice constitutes a decision, pursuant to the Disputes clause, that the contractor is in default as specified and that the contracting officer has determined that the delay is not excusable; and

(7) State that the contractor has the right to appeal as specified in the Disputes clause.

(d) The same distribution shall be made of the termination notice as was made of the contract. In addition, a copy shall be furnished to the surety, and the procuring activity's fiscal office shall be advised to withhold further payments under the terminated contract pending additional instructions which shall be given when sufficient information is available.

(e) Promptly after issuance of the termination notice, the contracting officer shall determine the manner in which the work is to be completed and whether the materials, appliances, and plant which are on the site will be needed.

§ 1–8.603–4 Dealings with surety—takeover agreements.

(a) By reason of the surety's liability for damages resulting from the contractor's default, the surety has certain rights and interests in connection with the completion of the contract work and the application of the undisbursed funds available therefor. An expenditure in excess of the amount reasonably necessary for completion or a diversion of funds to other use may result in reducing the surety's liability Because of such interests of the surety, proposals by the surety concerning the completion of the work should be given due consideration, and the decision as to the action to be taken shall be made on the basis of the best interest of the Government, including the possible effect of such action upon the Government's rights against the surety.

(b) Where the surety desires to complete the contract work, completion by the surety should normally be permitted unless the contracting officer has reason to believe that the persons, firms, or corporations by whom the surety proposes to have the work done are so incompetent or unqualified that the interests of the Government would be substantially prejudiced by their efforts.

(c) Because of the possibility of conflicting claims to unpaid prior earnings (retained percentages or amounts representing unpaid progress estimates) of the defaulting contractor, the surety may condition its offer of completion upon the execution by the Government of a "takeover" agreement fixing the surety's rights to payment from such funds. In that event the contracting officer may in his discretion (but not before the effective date of termination) enter into a written agreement with the surety. Further, consideration should be given to having the agreement include both the surety and the defaulting contractor in order to eliminate any disagreement as to the contractor's residual rights, such as claims to unpaid prior earnings. The agreement shall provide that the surety will undertake to complete the work required by the contract in accordance with all the terms and conditions of the contract, and that the Government will pay the surety in the manner provided by the contract, but not in excess of the surety's costs and expenses, the balance of the contract price unpaid at the time of default; subject, however, to the following conditions:

(1) Any unpaid earnings of the defaulting contractor, including retained percentages and progress estimates for work accomplished prior to termination, shall be subject to claims by the Government against the contractor, except to the extent that the amount thereof may be required to pay to the completing surety its actual costs and expenses incurred in the completion of the work, exclusive of its payments and obligations under the payment bond given in connection with the contract.

(2) Such agreement shall not waive or release the Government's right to liquidated damages for delays in completion of the work, except to the extent that such delays may be excused under the provisions of the contract.

(3) If the contract proceeds have been assigned to a financing institution, the surety may not be paid from retained percentages or amounts representing unpaid progress estimates earned by or payable to the contractor unless the as-

signee shall consent in writing to such payment.

(4) In no event shall the surety be entitled to be paid any amount in excess of its total expenditures necessarily made in completing the work and discharging its liabilities under the payment bond of the defaulting contractor. Furthermore, payments to the surety to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor shall be only on authority of (i) mutual agreement between the Government, the defaulting contractor, and the surety, or (ii) determination of the Comptroller General as to payee and amount, or (iii) order of a court of competent jurisdiction.

§ 1–8.603–5 Procedure in lieu of termination for default.

If, after due consideration, the contracting officer determines that termination is not in the best interest of the Government although the contractor is in default, the contracting officer may permit the contractor to continue the work, and the contractor and his sureties shall be liable to the Government for liquidated damages, as specified in the contract, or if liquidated damages are not so specified, to any actual damages occasioned by the failure of the contractor to complete the work in accordance with the terms of the contract.

§ 1–8.603–6 Documentation in contract file.

In all cases where a contractor's right to proceed is terminated for default or where the procedure authorized by § 1–8.603–5 is followed, the contract file shall be well documented to explain fully the reasons for the action taken.

§ 1–8.603–7 Liquidation of liability.

In accordance with the provisions of the contract, the contractor and his surety are liable to the Government for resulting damages. All retained percentages of progress payments previously made to the contractor and any progress payments due for work completed prior to the termination of the right to proceed shall be used for the purpose of liquidating the liability of the contractor and his surety to the Government for such damages. Where the retained and unpaid amounts are insufficient to liquidate such liability, steps shall be taken to recover the additional sum from the contractor and his surety.

§ 1–8.604 Default termination of cost-reimbursement type contracts.

(a) Under cost-reimbursement type contracts containing the Termination for Default or for Convenience of the Government clause in § 1–8.702, the Government has the right to terminate the contract for default for the reasons contained in paragraph (a)(1) of the clause.

(b) Settlement of a cost-reimbursement type contract terminated for default is subject to the principles set forth in Subparts 1–8.2 and 1–8.4 and is performed in the same manner and with the same consequences as when the contract is terminated for convenience except:

(1) The costs of preparing the contractor's settlement proposal are not allowable (see paragraph (e)(1)(iii) of the clause in § 1–8.702); and

(2) The fixed fee, if any, is paid only with respect to articles delivered and accepted (see paragraph (e)(1)(iv)(B) of the clause in § 1–8.702).

(c) In order that the best interests of the Government will be served, the procedures set forth in §§ 1–8.602 and 1–8.603 shall be used to the extent appropriate in considering the termination for default of a cost-reimbursement type contract; however, a cost-reimbursement type contract does not contain any provision for recovery of excess costs of reprocurement after termination for default.

§ 1–8.605 Default termination of certain fixed-price research and development contracts.

(a) Under fixed-price research and development contracts containing the Default clause in § 1–8.710, the Government has the right to terminate the contract for default under the conditions set forth in the clause.

(b) The language of the Default clause in § 1–8.710 closely parallels the wording of the Default clause set forth in § 1–8.707 for use in fixed-price supply contracts. That being the case, the guidelines and procedures in § 1–8.602 are generally applicable and shall be followed to the extent appropriate in considering the termination for default of a fixed-price research and development contract containing the Default clause in § 1–8.710.

Subpart 1–8.7—Clauses

§ 1–8.700 Scope and applicability of subpart.

§ 1–8.700–1 Scope.

This subpart contains certain contract clauses related to the termination of contracts (1) for the convenience of the Government, and (2) for default.

§ 1–8.700–2 Applicability.

(a) *Termination for convenience clauses.* The clauses set forth in §§ 1–8.701 through 1–8.706 are prescribed for use in accordance with this § 1–8.700–2(a) whenever an agency considers it necessary or desirable to provide in its contracts for termination for the convenience of the Government. Whenever such a clause is to be included:

(1) In any fixed-price contract in excess of $2,500 for (i) supplies, or (ii) experimental, developmental, or research work where a profit is contemplated, the clause set forth in § 1–8.701 shall be used, except as otherwise permitted by § 1–8.700–2(a)(2), when the contract is entered into by formal advertising or by negotiation.

(2) In any fixed-price contract for supplies which is not in excess of $10,000, the short-form termination clause set forth in § 1–8.705–1 is authorized for use in lieu of any other clause providing for termination for the convenience of the Government. The short-form clause is also authorized for use in any contract for services (such as contracts for rental of unreserved garage space and laundry and dry-cleaning services) where it is intended that a termination claim will not be made in the event of termination for the convenience of the Government.

(3) In any cost-reimbursement type contract for (i) supplies, or (ii) experimental, developmental, or research work where a fee is contemplated, the clause set forth in § 1–8.702 shall be used.

(4) In any fixed-price or cost-reimbursement type contract for experimental, developmental, or research work placed with an educational or nonprofit institution on a no-fee or no-profit basis, the clause set forth in § 1–8.704–1 shall be used.

(5) In any fixed-price construction contract estimated to exceed $10,000, the clause set forth in § 1–8.703 shall be used when the contract is entered into by formal advertising or by negotiation.

(6) In any fixed-price construction contract estimated not to exceed $10,000, the clause set forth in § 1–8.705–2 shall be used when the contract is entered into by formal advertising or by negotiation.

(7) Suggested clauses for use in certain subcontracts are covered in §§ 1–8.704–2 and 1–8.706.

(b) *Termination for default clauses.* (1) In any fixed-price supply contract, the clause set forth in § 1–8.707 shall be used when the contract is entered into either (i) by formal advertising, or (ii) by negotiation (when for other than small purchases made in accordance with Subpart 1–3.6).

(2) In any cost-reimbursement type contract for (i) supplies, or (ii) experimental, developmental, or research work where a fee is contemplated, the clause set forth in § 1–8.702 shall be used whenever an agency considers it desirable to provide a termination for default clause in such a contract.

(3) In any fixed-price research and development contract except a contract awarded on the basis of no-profit to an educational or nonprofit institution, the clause set forth in § 1–8.710 shall be used whenever an agency considers it desirable to provide a termination for default clause in such a contract.

(4) In any fixed-price construction contract estimated to exceed $10,000, the clause set forth in § 1–8.709–1 shall be used, except as modified by the footnote to § 1–8.709–1, when the contract is entered into either (i) by formal advertising, or (ii) by negotiation. During periods of national emergency, agencies may amend paragraph (d) of the clause as provided in § 1–16.404(e).

(5) In any fixed-price construction contract estimated not to exceed $10,000, the clause set forth in § 1–8.709–2 shall be used, except as modified by the footnote to § 1–8.709–2, when the contract is entered into either (i) by formal advertising, or (ii) by negotiation (when for other than small purchases made in accordance with Subpart 1–3.6).

(c) *Excusable delays clause.* A clause substantially as set forth in § 1–8.708 shall be used in a contract containing the termination clause set forth in § 1–8.702.

(d) *Special termination clauses.* Special termination clauses may be used in contracts such as letter contracts, time

and materials contracts, labor-hour contracts, and facilities contracts for which no clauses are prescribed for use by (a) and (b) of this § 1–8.700–2; however, the principles set forth in this Part 1–8 should be followed to the extent practicable.

§ 1–8.701 Termination clause for fixed-price contracts.

The following clause is applicable as prescribed in § 1–8.700–2(a)(1):

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Subpart 1–8.1 of the Federal Procurement Regulations (41 CFR 1–8.1), as the definition may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) For completed supplies accepted by the Government (or sold or acquired as provided in paragraph (b)(7) above) and not theretofore paid for, a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(2) The total of—

(i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies paid or to be paid for under paragraph (e)(1) hereof;

(ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(5) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors prior to the effective date of the Notice of Termination, which amounts shall be included in the costs payable under (i) above); and

(iii) A sum, as a profit, equal to 2 percent of that part of the amount determined under (i) above which represents the cost of articles and materials not processed by the Contractor, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (i) above: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(3) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (1) and (2) of this paragraph (e) shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (e)(1) and (2)(i) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(7).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs

set forth in ----------,[1] as in effect on the date of this contract.

(g) The Contractor shall have the right to appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer; or (2) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract; (2) any claim which the Government may have against the Contractor in connection with this contract; and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

[End of Clause]

[1] The contracting agency shall insert the reference which is appropriate to that agency: Subpart 1-15.2 of the Federal Procurement Regulations (41 CFR 1-15.2); or the corresponding agency regulations; or both.

§ 1-8.702 Termination clause for cost-reimbursement type contracts.

The following clause is applicable as prescribed in §§ 1-8.700-2(a)(3) and 1-8.700-2(b)(2):

TERMINATION FOR DEFAULT OR FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under the contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part:

(1) Whenever the Contractor shall default in performance of this contract in accordance with its terms (including in the term "default" any such failure by the Contractor to make progress in the prosecution of the work hereunder as endangers such performance), and shall fail to cure such default within a period of ten days (or such longer period as the Contracting Officer may allow) after receipt from the Contracting Officer of a notice specifying the default; or

(2) Whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government.

Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying whether termination is for the default of the Contractor or for the convenience of the Government, the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective. If, after notice of termination of this contract for default under (1) above, it is determined for any reason that the Contractor was not in default pursuant to (1), or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor pursuant to the provisions of the clause of this contract relating to excusable delays, the Notice of Termination shall be deemed to have been issued under (2) above, and the rights and obligations of the parties hereto shall in such event be governed accordingly.

(b) After receipt of a Notice of Termination and except as otherwise directed by the Contracting Officer, the Contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services, or facilities, except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Government, in the manner and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) With the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final and conclusive for all purposes of this clause, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, the cost of which would be reimbursable in whole or in part, in accordance with the provisions of this contract;

(6) Transfer title to the Government (to the extent that title has not already been transferred) and deliver in the manner, at the times, and to the extent directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination; (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the Government; and (iii) the jigs, dies, and fixtures, and other special tools and tooling acquired or manufactured for the performance of this contract for the cost of which the Contractor has been or will be reimbursed under this contract;

(7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however,* That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

The Contractor shall proceed immediately with the performance of the above obligations notwithstanding any delay in determining or adjusting the amount of the fee, or any item of reimbursable cost, under this clause. At any time after expiration of the plant clearance period, as defined in Subpart 1-8.1 of the Federal Procurement Regulations (41 CFR 1-8.1), as the definition may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or

authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount of amounts to be paid (including an allowance for the fee) to the Contractor by reason of the total or partial termination of work pursuant to this clause. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount.

(e) In the event of the failure of the Contractor and the Contracting Officer to agree in whole or in part, as provided in paragraph (d), as to the amounts with respect to costs and fee, or as to the amount of the fee, to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amount determined as follows:

(1) If the settlement includes cost and fee—

(i) There shall be included therein all costs and expenses reimbursable in accordance with this contract, not previously paid to the Contractor for the performance of this contract prior to the effective date of the Notice of Termination, and such of these costs as may continue for a reasonable time thereafter with the approval of or as directed by the Contracting Officer: *Provided, however*, That the Contractor shall proceed as rapidly as practicable to discontinue such costs;

(ii) There shall be included therein so far as not included under (i) above, the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (b)(5) above, which are properly chargeable to the terminated portion of the contract;

(iii) There shall be included therein the reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of termination inventory: *Provided, however*, That if the termination is for default of the Contractor there shall not be included any amounts for the preparation of the Contractor's settlement proposal; and

(iv) There shall be included therein a portion of the fee payable under the contract determined as follows—

(A) In the event of the termination of this contract for the convenience of the Government and not for the default of the Contractor, there shall be paid a percentage of the fee equivalent to the percentage of the completion of work contemplated by the contract, less fee payments previously made hereunder; or

(B) In the event of the termination of this contract for the default of the Contractor, the total fee payable shall be such proportionate part of the fee (or, if this contract calls for articles of different types, of such part of the fee as is reasonably allocable to the type of article under consideration) as the total number of articles delivered to and accepted by the Government bears to the total number of articles of a like kind called for by this contract.

If the amount determined under this subparagraph (1) is less than the total payment theretofore made to the Contractor, the Contractor shall repay to the Government the excess amount.

(2) If the settlement includes only the fee, the amount thereof will be determined in accordance with subparagraph (1)(iv) above.

(f) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (2) if an appeal has been taken, the amount finally determined on such appeal.

(g) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments theretofore made to the Contractor, applicable to the terminated portion of this contract, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(h) In the event of a partial termination, the portion of the fee which is payable with respect to the work under the continued portion of the contract shall be equitably adjusted by agreement between the Contractor and the Contracting Officer, and such adjustment shall be evidenced by an amendment to this contract.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however*, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(j) The provisions of this clause relating to the fee shall be inapplicable if this contract does not provide for payment of a fee.

§ 1-8.703 Termination clause for fixed-price construction contracts.

The following clause is applicable as prescribed in § 1-8.700-2(a)(5):

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated by the Government in accordance with this clause in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and the date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(4) Assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the Government;

(7) Use his best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in (6) above: *Provided, however*, That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed and at a price or prices approved by the Contracting Officer: *And provided further*, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the Contracting Officer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

At any time after expiration of the plant clearance period, as defined in Subpart 1–8.1 of the Federal Procurement Regulations (41 CFR 1–8.1), as the definition may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: *Provided,* That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items or, if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made prior to final settlement.

(c) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer his termination claim, in the form and with the certification prescribed by the Contracting Officer. Such claim shall be sumitted promptly but in no event later than one year from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such one-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such one-year period or extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Subject to the provisions of paragraph (c), and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (e) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the Contracting Officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the Contractor pursuant to this paragraph (d).

(e) In the event of the failure of the Contractor and the Contracting Officer to agree as provided in paragraph (d) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the Contracting Officer shall, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall pay to the Contractor the amounts determined as follows:

(1) With respect to all contract work performed prior to the effective date of the Notice of Termination, the total (without duplication of any items) of—

(i) The cost of such work;

(ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b)(5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amounts shall be included in the cost on account of which payment is made under (i) above; and

(iii) A sum, as a profit, equal to 2 percent of the part of the amount determined under (i) above, which represents the cost of articles or materials delivered to the site but not incorporated in the work in place on the effective date of the Notice of Termination, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sums shall not exceed 6 percent of the whole of the amount determined under (i) above: *Provided, however,* That if it appears that the Contractor would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(2) The reasonable cost of the preservation and protection of property incurred pursuant to paragraph (b)(9); and any other reasonable cost incidental to termination of work under this contract, including expense incidental to the determination of the amount due to the Contractor as the result of the termination of work under this contract.

The total sum to be paid to the Contractor under (1) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor under (1) above, the fair value, as determined by the Contracting Officer, of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government, or to a buyer pursuant to paragraph (b)(7).

(f) Any determination of costs under paragraph (c) or (e) hereof shall be governed by the principles for consideration of costs set forth in _____,[1] as in effect on the date of this contract.

(g) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the Contracting Officer under paragraph (c) or (e) above, except that, if the Contractor has failed to submit his claim within the time provided in paragraph (c) above and has failed to request extension of such time, he shall have no such right of appeal. In any case where the Contracting Officer has made a determination of the amount due under paragraph (c) or (e) above, the Government shall pay to the Contractor the following: (1) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (2) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due the Contractor under this clause there shall be deducted (1) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things kept by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the Government.

(i) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the Contractor may file with the Contracting Officer a request in writing for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices; however, nothing contained herein shall limit the right of the Government and the Contractor to agree upon the amount or amounts to be paid to the Contractor for the completion of the continued portion of the contract when said contract does not contain an established contract price for such continued portion.

(j) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the Contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand, together with interest computed at the rate of 6 percent per annum for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the Contracting Officer by reason of the circumstances.

(k) Unless otherwise provided for in this contract, or by applicable statute, the Contractor, from the effective date of termination and for a period of three years after final settlement under this contract, shall preserve and make available to the Government at all reasonable times at the office of the Contractor, but without direct charge to the Government, all his books, records, documents, and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

[End of Clause]

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[1] The contracting agency shall insert the reference which is appropriate to that agency: Subpart 1–15.4 of the Federal Procurement Regulations (41 CFR 1–15.4); or the corresponding agency regulations; or both.

§ 1–8.704 Research and development contracts with educational and other nonprofit institutions.

§ 1–8.704–1 Termination clause.

The following clause is applicable as prescribed in § 1–8.700–2(a)(4):

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the Government whenever for any reason the Contracting Officer shall determine that such termination is in the best interest of the Government. Termination of work hereunder shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under the contract is terminated and the date upon which such termination becomes effective.

(b) After receipt of the Notice of Termination the Contractor shall cancel his outstanding commitments hereunder covering the procurement of materials, supplies, equipment, and miscellaneous items. In addition, the Contractor shall exercise all reasonable diligence to accomplish the cancellation or diversion of his outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice. With respect to such canceled commitments the Contractor agrees to (1) settle all outstanding liabilities and all claims arising out of such cancellation of commitments, with the approval or ratification of the Contracting Officer, to the extent he may require, which approval or ratification shall be final for all purposes of this clause, and (2) assign to the Government, in the manner, at the time, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Government shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(c) The Contractor shall submit his termination claim to the Contracting Officer promptly after receipt of a Notice of Termination, but in no event later than one year from the effective date thereof, unless one or more extensions in writing are granted by the Contracting Officer upon written request of the Contractor within such one-year period or authorized extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the Contracting Officer may, subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

(d) Any determination of costs under paragraph (c) shall be governed by the cost principles set forth in Subpart 1–15.3 of the Federal Procurement Regulations (41 CFR 1–15.3), as in effect on the date of this contract, except that if the Contractor is not an educational institution the determination shall be governed by _____.[1]

(e) Subject to the provisions of paragraph (c) above, and subject to any review required by the contracting agency's procedures in effect as of the date of execution of this contract, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the termination under this clause, which amount or amounts may include any reasonable cancellation charges thereby incurred by the Contractor and any reasonable loss upon outstanding commitments for personal services which he is unable to cancel: *Provided, however,* That in connection with any outstanding commitments for personal services which the Contractor is unable to cancel, the Contractor shall have exercised reasonable diligence to divert such commitments to his other activities and operations. Any such agreement shall be embodied in an amendment to this contract and the Contractor shall be paid the agreed amount.

(f) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments against costs incurred by the Contractor in connection with the terminated portion of this contract, whenever, in the opinion of the Contracting Officer, the aggregate of such payments is within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand: *Provided,* That if such excess is not so paid upon demand, interest thereon shall be payable by the Contractor to the Government at the rate of 6 percent per annum, beginning 30 days from the date of such demand.

(g) The Contractor agrees to transfer title to the Government and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer, such information and items which, if the contract had been completed, would have been required to be furnished to the Government, including:

(1) Completed or partially completed plans, drawings, and information; and

(2) Materials or equipment produced or in process or acquired in connection with the performance of the work terminated by the notice.

Other than the above, any termination inventory resulting from the termination of the contract may, with the written approval of the Contracting Officer, be sold or acquired by the Contractor under the conditions prescribed by and at a price or prices approved by the Contracting Officer. The proceeds of any such disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this contract or shall otherwise be credited to the price or cost of work covered by this contract or paid in such other manner as the Contracting Officer may direct. Pending final disposition of property arising from the termination, the Contractor agrees to take such action as may be necessary, or as the Contracting Officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the Government has or may acquire an interest.

(h) Any disputes as to questions of fact which may arise hereunder shall be subject to the "Disputes" clause of this contract.

[End of Clause]

[1] The contracting agency shall insert the reference which is appropriate to that agency: Subpart 1–15.2 of the Federal Procurement Regulations (41 CFR 1–15.2); or the corresponding agency regulations; or both.

§ 1–8.704–2 Suggested clause for subcontracts.

The clause set forth in § 1–8.704–1 is suggested for use in a subcontract placed with an educational or nonprofit institution provided the subcontract is placed on a no-fee or no-profit basis and provided the clause is suitably altered (1) to indicate the relationship between the prime contractor and the subcontractor, and (2) to indicate the appropriate cost principles on which the subcontract is negotiated.

§ 1–8.705 Short-form termination for convenience clauses for fixed-price type contracts.

§ 1–8.705–1 Contracts for supplies or services.

The following clause is applicable as prescribed in § 1–8.700–2(a)(2):

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the best interest of the Government. If this contract is for supplies and is so terminated, the Contractor shall be compensated in accordance with Part 1–8 of the Federal Procurement Regulations (41 CFR 1–8), in effect on this contract's date. To the extent that this contract is for services and is so terminated, the Government shall be liable only for payment in accordance with the payment provisions of this contract for services rendered prior to the effective date of termination.

§ 1–8.705–2 Construction contracts.

The following clause is applicable as prescribed in § 1–8.700–2(a)(6):

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the interest of the Government. If this contract is terminated, the Contractor shall be compensated in accordance with Part 1–8 of the Federal Procurement Regulations (41 CFR 1–8), in effect on this contract's date.

§ 1–8.706 Subcontract termination clause.

The following termination clause is suggested for use in fixed-price subcontracts:

TERMINATION

(a) The performance of work under this contract may be terminated, in whole or from time to time in part, by the buyer in accordance with this clause. Termination of work hereunder shall be effected by delivery to the seller of a Notice of Termination specifying the extent to which performance of work under the contract is terminated, and date upon which such termination becomes effective.

(b) After receipt of a Notice of Termination and except as otherwise directed by the buyer, the seller shall:

(1) Stop work under the contract on the date and to the extent specified in the Notice of Termination;

(2) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portions of the work under the contract as may not be terminated;

(3) Terminate all orders and subcontracts to the extent that they relate to the performance of any work terminated by the Notice of Termination;

(4) Assign to the buyer, in the manner, and to the extent directed by the buyer, all of the right, title, and interest of his seller under the orders or subcontracts so terminated;

(5) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts subject to the approval or ratification of the buyer to the

extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(6) Transfer title and deliver to the buyer in the manner, to the extent, and at the times directed by the buyer (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would be required to be furnished to the buyer;

(7) Use his best efforts to sell, in the manner, to the extent, at the time, and at the price or prices directed or authorized by the buyer, any property of the types referred to in (6) above: *Provided, however,* That the seller (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the buyer: *And provided further,* That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the buyer to the seller under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the buyer may direct;

(8) Complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and

(9) Take such action as may be necessary or as the buyer may direct for protection and preservation of the property related to this contract which is in the possession of the seller and in which the buyer or the Government has or may acquire an interest.

(c) After receipt of a Notice of Termination, the seller shall submit to the buyer his termination claim, in the form and with the certification prescribed by the buyer. Such claim shall be submitted promptly, but not later than six (6) months from the effective date of termination. Upon failure of the seller to submit his termination claim within the time allowed, the buyer may determine, on the basis of information available to him, the amount, if any, due to the seller with respect to the termination and such determination shall be final. After the buyer has made a determination under this paragraph, he shall pay the seller the amount so determined.

(d) Subject to the provisions of paragraph (c) the seller and the buyer may agree upon the whole or any part of the amount or amounts to be paid to the seller by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done and the buyer shall pay the agreed amount or amounts: *Provided,* That such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Nothing in paragraph (e) below prescribing the amount to be paid to the seller in the event of the failure of the seller and the buyer to agree upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts which may be agreed upon to be paid to the seller pursuant to this paragraph (d).

(e) In the event of the failure of the seller and the buyer to agree as provided in paragraph (d) upon the whole amount to be paid to the seller by reason of the termination of work pursuant to this clause, the buyer, but without duplication of any amounts agreed upon in accordance with paragraph (d), shall pay to the seller the following amounts:

(1) For completed supplies accepted by the buyer (or sold or acquired as provided in paragraph (b)(7) above) and not theretofore paid for, forthwith a sum equivalent to the aggregate price for such supplies computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(2) In respect of the work terminated as permitted by this clause, the total (without duplication of any items) of—

(i) The cost of such work, including initial costs and preparatory expenses allocable thereto, exclusive of any costs attributable to supplies paid or to be paid for under (1) above; and

(ii) The cost of settling and paying claims arising out of the termination of work under subcontracts or orders as provided in paragraph (b)(5) above, exclusive of the amounts paid or payable on account of supplies or materials delivered or services furnished by the subcontractor prior to the effective date of the Notice of Termination of work under this contract, which amount shall be included in the cost on account of which payment is made under (i) above; and

(iii) A sum, as a profit, equal to 2 percent of the part of the amount determined under (i) above which represents the cost of articles and materials not processed by the seller, plus a sum equal to 8 percent of the remainder of such amount, but the aggregate of such sum shall not exceed 6 percent of the whole of the amount determined under (i) above, which amount for the purpose of this subdivision (iii) shall exclude any charges for interest on borrowings: *Provided, however,* That if it appears that the seller would have sustained a loss on the entire contract had it been completed, no profit shall be included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(3) The reasonable costs of settlement, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of the property allocable to this contract.

The total sum to be paid to the seller under (1) and (2) above shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage and except to the extent that the buyer or the Government shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the seller under (1) and (2)(i) above the fair value as determined by the buyer of property which is destroyed, lost, stolen, or damaged so as to become undeliverable to the buyer or to a purchaser pursuant to paragraph (b)(7).

(f) The obligation of the buyer to make any payments under this clause shall be subject to deductions with respect to (1) all unliquidated abvance or other payments on account theretofore made to the seller applicable to the terminated portion of this contract, (2) any claim which the buyer may have against the seller, in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things retained by the seller or sold, and not otherwise recovered by or credited to the buyer.

(g) If the termination hereunder be partial, prior to the settlement of the terminated portion of this contract, the seller may file with the buyer a request in writing that an equitable adjustment be made in the price or prices specified in the contract for the work in connection with the continued portion not terminated by the Notice of Termination, and the appropriate equitable adjustment shall be made in such price or prices.

(h) The buyer may, from time to time, under such terms and conditions as he may prescribe, make partial payments and payments on account against costs incurred by the seller with respect to the terminated portion of the contract, whenever in the opinion of the buyer the aggregate of such payments shall be within the amount to which the seller will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed upon or determined to be due under this clause, such excess shall be payable by the seller to the buyer upon demand, together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the seller to the date on which such excess is repaid: *Provided, however,* That no interest shall be charged with respect to any such excess payment attributable to a reduction in the seller's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or such later date as determined by the buyer by reason of the circumstances.

(i) For the purpose of paragraphs (c) and (e) above, the amounts of the payments to be made by the buyer to the seller shall be determined in conformity with the policies and principles set forth in Part 1-8 of the Federal Procurement Regulations (41 CFR 1-8), in effect at the date of this contract. Unless otherwise provided for in this contract, or by applicable statute, the seller, for a period of three years after final settlement under the contract shall make available to the buyer and the Government at all reasonable times at the office of the seller all his books, records, documents, or other evidence bearing on the costs and expenses of the seller under the contract and in respect of the termination of work hereunder or, to the extent approved by the Government, photographs, microphotographs, or other authentic reproductions thereof.

§ 1-8.707 Default clause for fixed-price supply contracts.

The following clause is applicable as prescribed in § 1-8.700-2(b)(1):

DEFAULT

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Govern-

ment for any excess costs for such similar supplies or services: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 1–8.708 Excusable delays clause for cost-reimbursement type contracts.

The following clause is applicable as prescribed in § 1–8.700–2(c):

EXCUSABLE DELAYS

Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if such failure arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the failure of a subcontractor to perform or make progress, and if such failure arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be deemed to be in default, unless (a) the supplies or services to be furnished by the subcontractor were obtainable from other sources, (b) the Contracting Officer shall have ordered the Contractor in writing to procure such supplies or services from such other sources, and (c) the Contractor shall have failed to comply reasonably with such order. Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of such failure and, if he shall determine that any failure to perform was occasioned by any one or more of the said causes, the delivery schedule shall be revised accordingly, subject to the rights of the Government under the clause hereof entitled Termination for Default or for Convenience of the Government.

§ 1–8.709 Default clause for fixed-price construction contracts.

§ 1–8.709–1 Long-form clause.

The following clause is applicable as prescribed in § 1–8.700–2(b)(4):

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties subject only to appeal as provided in the clause of this contract entitled "Disputes."[1]

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

[1] When Standard Form 23A is used, the words "the clause of this contract entitled 'Disputes'" shall not be substituted for the words "Clause 6 of these General Provisions" in that form.

[End of Clause]

§ 1–8.709–2 Short-form clause.

The following clause is applicable as prescribed in § 1–8.700–2(b)(5):

TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

(a) If the Contractor does not prosecute the work so as to insure completion, or fails to complete it, within the time specified, the Government, may be written notice to the Contractor, terminate his right to proceed. Thereafter, the Government may have the work completed and the Contractor shall be liable for any resulting excess cost to the Government. If the Government does not terminate the Contractor's right to proceed, he shall continue the work and shall be liable to the Government for any actual damages occasioned by such delay unless liquidated damages are stipulated.

(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with actual or liquidated damages under (a) above because of any delays in completion of the work due to causes other than normal weather, beyond his control and without his fault or negligence, including but not restricted to, acts of God, acts of the public enemy, acts of the Government (in either its sovereign or contractual capacity), acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors or suppliers due to causes beyond their control and without their fault or negligence: *Provided,* That the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the contract, notify the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties hereto, subject only to appeal as provided in the clause of this contract entitled "Disputes." [1]

[1] When Standard Form 19 is used, the words "the clause of this contract entitled 'Disputes'" shall not be substituted for the words "Clause 3 hereof" in that form.

[End of Clause]

§ 1–8.710 Default clause for fixed-price research and development contracts.

The following clause is applicable as prescribed in § 1–8.700–2(b)(3):

DEFAULT

(a) The Government may, subject to the provisions of paragraph (c) of this clause, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(1) If the Contractor fails to perform the work called for by this contract within the time(s) specified herein or any extension thereof; or

(2) If the Contractor fails to perform any of the other provisions of this contract, or so fails to prosecute the work as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, work similar to the work so terminated and the Contractor shall be liable to the Government for any excess costs for such similar work: *Provided,* That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule or other performance requirements.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, any of the completed or partially completed work not theretofore delivered to, and accepted by, the Government and any other property, including contract rights, specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon the direction of the Contracting Officer, protect and preserve property in the possession of the Contractor in which the Government has an interest. The Government shall pay to the Contractor the contract price, if separately stated, for completed work accepted by the Government and the amount agreed upon by the Contractor and the Contracting Officer for (1) completed work for which no separate price is stated, (2) partially completed work, (3) other property described above which is accepted by the Government, and (4) the protection and preservation of property. Failure to agree shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The right and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Subpart 1–8.8—Formats of Notices, Forms, Warranties, and Agreements

§ 1–8.800 Scope of subpart.

This subpart contains certain suggested formats of notices, forms, warranties, and agreements related to the termination and settlement of contracts. The formats are for guidance of agencies in their implementation of this Part 1–8.

§ 1–8.801 Notice of termination for convenience of the Government.

§ 1–8.801–1 Telegraphic notice.

(a) The following format of telegraphic notice is suggested for use where a supply contract is being completely terminated. With appropriate modification, the notice can be used in connection with other than a supply contract.

TELEGRAPHIC NOTICE—COMPLETE TERMINATION

Date _____

XYZ Corporation
New York, New York

Your contract No. _____ is hereby terminated in its entirety pursuant to clause _____ of the contract effective [here insert "immediately" or "on _____, 19__," (inserting the date) or "as soon as you have delivered thereunder including previous deliveries the following items" (listing items)]. Immediately stop all work, terminate subcontracts and place no further orders except to extent (insert if applicable "that is necessary to perform any portion thereof not terminated hereby or") that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Letters and instructions follow.

_____
(Contracting Officer)

(b) The following format of telegraphic notice is suggested where a supply contract is being partially terminated. With appropriate modification, the notice can be used in connection with other than a supply contract.

TELEGRAPHIC NOTICE—PARTIAL TERMINATION

Date _____

XYZ Corporation
New York, New York

Your contract No. _____ is hereby partially terminated pursuant to clause _____ of the contract effective on _____, 19__, on which date you will reduce its total number of items to be delivered as follows (inserting instructions as to reduced deliveries). Immediately stop all work, terminate subcontracts and place no further orders except to extent that is necessary to perform any portion thereof not terminated hereby or that you or a subcontractor wish to retain and continue for own account any work in process or other materials. Telegraph similar instructions to all subcontractors and suppliers. Letter and instructions follow.

_____
(Contracting Officer)

§ 1–8.801–2 Letter notice.

The following format of letter notice of termination of a prime supply contract is suggested for use. With appropriate modification, it is suitable for use in terminating other than a supply contract and in terminating a subcontract.

LETTER NOTICE OF TERMINATION TO PRIME CONTRACTORS

[At the top of the notice set out all special details relating to the particular termination: e.g., name and address of company, number of prime contract terminated, service involved, appropriation or allotment, etc.

Two alternative forms of paragraph No. 1 are set out below. If this written termination notice confirms a telegraphic notice previously sent, use the first of the alternative paragraphs No. 1 below. If no previous telegraphic notice has been sent, use the second.]

1. *Effective Date of Termination.* This letter will confirm the Government's telegram to you dated _____, 19__, terminating [in part] your Contract No. _____ (hereinafter referred to as "the contract") for the convenience of the Government, in accordance with the clause thereof entitled "Termination for Convenience of the Government" [or, in the case of a cost-reimbursement-type contract, "Termination for Default or for Convenience of the Government"]. Such termination is effective on the date and in the manner stated in the telegram referenced above [or a copy of which is attached hereto].

(or)

1. *Effective Date of Termination.* You are notified that your Contract No. _____ (hereinafter referred to as "the contract") is hereby terminated [in part] for the convenience of the Government, in accordance with the clause thereof entitled "Termination for Convenience of the Government" [or, in the case of a cost-reimbursement-type contract, "Termination for Default or for Convenience of the Government"]. Such termination will be effective: _____. [Here insert either "immediately upon your receipt of this Notice" or "on _____, 19__," (inserting the date) or "as soon as you have delivered under the contract the following number of each of the items listed below, including those heretofore delivered, to wit: _____" or, "on _____, 19__, on which date you are hereby directed to reduce the total number of items to be delivered under the contract as follows": (here insert instructions as to reduced deliveries.)]

2. *Cessation of Work and Notification to Immediate Subcontractors.* (a) You shall stop all work, make no further shipments, and place no further orders in connection with the contract, except (1) to the extent necessary to perform any portion thereof not terminated by this Notice, or (2) to the extent that you may wish to retain and continue any work in process or other materials for your own account, or (3) to the extent the Contracting Officer authorizes you to continue work in process for reasons of safety, or to clear [or avoid damage to] equipment or to avoid immediate complete spoilage of work in process having a definite commercial value, or otherwise to prevent undue loss to the Government. [If you believe the authorization referred to in paragraph 2(a)(3) is necessary or advisable, you shall immediately notify the Contracting Officer by telephone or personal conference and obtain instructions.] You shall keep adequate records of your compliance with this paragraph 2(a) showing (i) the date you received your Notice of Termination, (ii) the effective date of such termination, and (iii) the extent of completion of performance on such effective date.

(b) You shall give notice of termination to each of your immediate subcontractors (including suppliers) who will be affected by the termination of your contract. In such notice you shall (1) give him the number of your contract with the Government; (2) state that it has been terminated (or terminated in part, if that is the case) for the convenience of the Government; (3) give him the name and address of the Contracting Officer; (4) instruct him to stop all work, to make no further shipments, to place no more orders, and to terminate all subcontracts under this contract with you (subject to the same exceptions stated in paragraph 2(a)); (5) direct him to submit his settlement proposal promptly in order to expedite settlement; and (6) request him to give similar notice and instructions to his immediate subcontractors.

(c) You shall notify the Contracting Officer of the number of articles completed under the contract and still on hand, and arrange with him for their delivery or other disposal.

(d) You shall forthwith transfer title to the Government and deliver in accordance with any instructions of the Contracting Officer, all items of termination inventory (including subcontractor termination inventory which under the terms of the subcontract or purchase order concerned you have the right to take over) of the following types or classes: [Insert proper identification or "none".]

(e) You shall notify the Contracting Officer of any pending legal proceedings which relate to any subcontracts or purchase orders under the terminated contract or which have resulted in or which are intended to result in a lien or encumbrance on any termination inventory other than termination inventory you propose and are authorized to purchase, retain, or dispose of. The Contracting Officer shall also be promptly notified of any such proceedings brought after receipt of this Notice.

(f) You shall submit your settlement proposal and take such other action as may be required by the Contracting Officer or under the termination clause contained in your contract.

3. *Termination Inventory.* In connection with settlement of your claim it will be necessary to establish that all your termination inventory and that of your subcontractors has been properly accounted for. For detailed information, see Subpart 1–8.5 of the Federal Procurement Regulations (41 CFR 1–8.5).

4. *Completed End Items.* Subject to § 1–8.306 of the Federal Procurement Regulations (41 CFR 1–8.306), you will invoice acceptable completed end items under the contract in the usual way and not include them in your settlement proposal.

5. *Patents.* Your attention is called to any provisions of the contract which may require you to make a disclosure of, and to deliver to the Government instruments of license or assignment respecting, all inventions, discoveries, and patent applications made by you in the performance of the contract. You are urged to forward such disclosures and instruments of license or assignment to the Contracting Officer promptly, inasmuch as these contractural obligations must be complied with before execution of the final settlement agreement. This paragraph may be disregarded if the contract contains no such patent provisions.

6. *Settlements with Subcontractors.* You remain liable to your subcontractors and suppliers for claims arising by reason of the termination of their subcontracts or orders. You are requested to settle such termination claims as promptly as possible. For purposes of reimbursement by the Government, such settlements will be governed by the provisions of Part 1–8 of the Federal Procurement Regulations (41 CFR 1–8).

7. *Office in Charge of Settlement.* The Office named below will be in charge of the settlement of your claim. As to any matters not covered by this Notice, you should consult the Office named below.

8. *Acknowledgment of Receipt of Notice.* Please acknowledge receipt of this notice as shown below.

_____
(Contracting Officer)

_____
(Name of Office)

_____
(Address)

ACKNOWLEDGMENT OF NOTICE

The undersigned hereby acknowledges receipt of a signed copy of the foregoing Notice on _____, 19___.

_____
(Name of Contractor)

By _____

_____
(Title)

§ 1-8.802 Formats of settlement proposal forms.

§ 1-8.802-1 Format 802-1, Settlement Proposal (Inventory Basis)—fixed-price type contracts.

(a) Page 1 of Format 802-1.

SETTLEMENT PROPOSAL (Inventory Basis)

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO *(Check one)* ☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER	COMPANY
SUBCONTRACT OR PURCHASE ORDER NO(S).	STREET ADDRESS
CONTRACTOR WHO SENT NOTICE OF TERMINATION	CITY AND STATE
NAME	NAME OF GOVERNMENT AGENCY
ADDRESS	GOVERNMENT PRIME CONTRACT NO. / CONTRACTOR'S REFERENCE NO.
IF MONEYS PAYABLE UNDER THE CONTRACT HAVE BEEN ASSIGNED, GIVE THE FOLLOWING	
NAME OF ASSIGNEE	EFFECTIVE DATE OF TERMINATION
ADDRESS	PROPOSAL NO. / CHECK ONE ☐ INTERIM ☐ FINAL

FORMAT 804-1 *(Schedule of Accounting Information)* ☐ IS ☐ IS NOT ATTACHED. *(If not, explain)*

SECTION 1—STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED: ON HAND: PAYMENTS TO BE RECEIVED THROUGH INVOICING (c)	FINISHED: ON HAND: INCLUDED IN THIS PROPOSAL (d)	UNFINISHED OR NOT COMMENCED: TO BE COMPLETED *(Partial termination only)* (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	Quantity						
	$						
	Quantity						
	$						
	Quantity						
	$						

SPECIMEN

SECTION II—PROPOSED SETTLEMENT

NO.	ITEM (a)	*(Use Columns (b) and (c) Only Where Previous Proposal Has Been Filed)* TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL PROPOSED TO DATE (d)	*FOR USE OF CONTRACTING AGENCY ONLY* (e)
1	METALS *(from Format 803-1)*				
2	RAW MATERIALS *(other than metals) (from Format 803-3)*				
3	PURCHASED PARTS *(from Format 803-3)*				
4	FINISHED COMPONENTS *(from Format 803-3) (See Schedule A)*				
5	MISCELLANEOUS INVENTORY *(from Format 803-3)*				
6	WORK IN PROCESS *(from Format 803-5) (See Schedule A)*				
7	DIES, JIGS, FIXTURES AND SPECIAL TOOLS *(Format 803-7)*				
8	OTHER COSTS *(from Schedule B)*				
9	GENERAL AND ADMINISTRATIVE EXPENSES *(from Schedule C)*				
10	*TOTAL (Items 1 to 9 inclusive)*				
11	PROFIT *(explain in Schedule D)*				
12	SETTLEMENT EXPENSES *(from Schedule E)*				
13	*TOTAL (Items 10 to 12 inclusive)*				
14	SETTLEMENTS WITH SUBCONTRACTORS *(from Schedule F)*				
15	ACCEPTABLE FINISHED PRODUCT *(from Format 803-5)*				
16	GROSS PROPOSED SETTLEMENT *(Items 13 thru 15)*				
17	DISPOSAL AND OTHER CREDITS *(from Schedule G)*				
18	NET PROPOSED SETTLEMENT *(Item 16 less 17)*				
19	ADVANCE, PROGRESS & PARTIAL PAYMENTS *(from Schedule H)*				
20	NET PAYMENT REQUESTED *(Item 18 less 19)*				

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SUPPORTING SCHEDULES

(b) Page 2 of Format 802-1.

SCHEDULE A—ANALYSIS OF INVENTORY COST *(Items 4 and 6)*

Furnish the following information *(unless not reasonably available)* in respect to inventories of finished components and work in process included in this proposal:

	TOTAL DIRECT LABOR	TOTAL DIRECT MATERIALS	TOTAL INDIRECT EXPENSES	TOTAL
FINISHED COMPONENTS				
WORK IN PROCESS				

SCHEDULE B—OTHER COSTS *(Item 8)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C—GENERAL AND ADMINISTRATIVE EXPENSES *(Item 9)*

DETAIL OF EXPENSES	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SPECIMEN

SCHEDULE D—PROFIT *(Item 11)*

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SUPPORTING SCHEDULES

2

(c) Page 3 of Format 802-1.

SCHEDULE E—SETTLEMENT EXPENSES *(Item 12)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F—SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS *(Item 14)*

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SPECIMEN

SCHEDULE G—DISPOSAL AND OTHER CREDITS *(Item 17)*

DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included in Item 15)

NOTE.—Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SUPPORTING SCHEDULES

3

(d) Page 4 of Format 802-1.

SCHEDULE H—ADVANCE, PROGRESS AND PARTIAL PAYMENTS

DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SUPPORTING SCHEDULES

SPECIMEN

CERTIFICATE

THE UNDERSIGNED, individually and as an authorized representative of the contractor, certifies that he has examined this settlement proposal and that, to the best of his knowledge and belief:

(1) AS TO CONTRACTOR'S OWN CHARGES.—The proposed settlement *(exclusive of charges set forth in Item 14)* and supporting schedules and explanations have been prepared from the books of account and records of the contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a claim or claims against the United States or an agency thereof; and the charges as stated are fair and reasonable.

(2) AS TO SUBCONTRACTORS' CHARGES.—*(a)* The contractor has examined, or caused to be examined, to an extent he considered adequate in the circumstances, the claims of his immediate subcontractors *(exclusive of claims filed against such immediate subcontractors by their subcontractors)*; *(b)* the settlements on account of immediate subcontractors' own charges are fair and reasonable, said charges are allocable to the terminated portion of this contract and said settlements were negotiated in good faith and are not more favorable to his immediate subcontractors than those which the contractor would make if reimbursement by the Government were not involved; *(c)* the contractor has received from all his immediate subcontractors appropriate certificates with respect to their claims, which certificates are substantially in the form of this certificate; and *(d)* the contractor has no information leading him to doubt *(i)* the reasonableness of the settlements with more remote subcontractors, or *(ii)* that the charges for them are allocable to this contract. Upon receipt by the contractor of amounts covering settlements with his immediate subcontractors, the contractor will pay or credit them promptly with the amounts so received, to the extent that he has not previously done so. The term "subcontractor" as used above includes suppliers.

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

§ 1-8.802-2 Format 802-2, Settlement Proposal (Total Cost Basis)—fixed-price type contracts.

(a) Page 1 of Format 802-2.

SETTLEMENT PROPOSAL (Total Cost Basis)

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO *(Check one)* ☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER	COMPANY	
SUBCONTRACT OR PURCHASE ORDER NO(S).	STREET ADDRESS	
CONTRACTOR WHO SENT NOTICE OF TERMINATION	CITY AND STATE	
NAME	NAME OF GOVERNMENT AGENCY	
ADDRESS	GOVERNMENT PRIME CONTRACT NO.	CONTRACTOR'S REFERENCE NO.
IF MONEYS PAYABLE UNDER THE CONTRACT HAVE BEEN ASSIGNED, GIVE THE FOLLOWING		
NAME OF ASSIGNEE	EFFECTIVE DATE OF TERMINATION	
ADDRESS	PROPOSAL NO.	CHECK ONE ☐ INTERIM ☐ FINAL

FORMAT 804-1 *(Schedule of Accounting Information)* ☐ IS ☐ IS NOT ATTACHED *(If not, explain)*

SECTION I—STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED ON HAND: PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	FINISHED ON HAND: PAYMENT NOT TO BE RECEIVED THROUGH INVOICING (d)	UNFINISHED OR NOT COMMENCED: SUBSEQUENTLY COMPLETED AND INVOICED [1] (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	Quantity						
	$						
	Quantity						
	$						
	Quantity						
	$						

SPECIMEN

SECTION II—PROPOSED SETTLEMENT

NO.	ITEM (a)	*(Use Columns (b) and (c) Only Where Previous Proposal Has Been Filed)* TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
1	DIRECT MATERIAL				
2	DIRECT LABOR				
3	INDIRECT FACTORY EXPENSE *(from Schedule A)*				
4	DIES, JIGS, FIXTURES AND SPECIAL TOOLS *(Format 803-7)*				
5	OTHER COSTS *(from Schedule B)*				
6	GENERAL AND ADMINISTRATIVE EXPENSES *(from Schedule C)*				
7	*TOTAL COSTS (Items 1 thru 6)*				
8	PROFIT *(explain in Schedule D)*				
9	*TOTAL (Items 7 and 8)*				
10	DEDUCT—FINISHED PRODUCT INVOICED OR TO BE INVOICED [1]				
11	*TOTAL (Item 9 less Item 10)*				
12	SETTLEMENT EXPENSES *(from Schedule E)*				
13	*TOTAL (Items 11 and 12)*				
14	SETTLEMENTS WITH SUBCONTRACTORS *(from Schedule F)*				
15	GROSS PROPOSED SETTLEMENT *(Items 13 thru 14)*				
16	DISPOSAL AND OTHER CREDITS *(from Schedule G)*				
17	NET PROPOSED SETTLEMENT *(Item 15 less 16)*				
18	ADVANCE, PROGRESS AND PARTIAL PAYMENTS *(from Schedule H)*				
19	NET PAYMENT REQUESTED *(Item 17 less 18)*				

[1] Column (e), Section I, should only be used in the event of a partial termination, in which case the total cost reported in Section II should be accumulated to date of completion of the continued portion of the contract and the deduction for finished product (Item 10, Section II) should be the contract price of finished product in Columns (b), (c) and (e), Section I.

NOTE.—Inventory schedules (Formats 803-1, 803-3, 803-5, and 803-7) applicable to inventories allocable to this contract and on hand at date of termination must be filed.

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SUPPORTING SCHEDULES

(b) Page 2 of Format 802-2.

SCHEDULE A—INDIRECT FACTORY EXPENSE *(Item 3)*

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE B—OTHER COSTS *(Item 5)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C—GENERAL AND ADMINISTRATIVE EXPENSES *(Item 6)*

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D—PROFIT *(Item 8)*

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SUPPORTING SCHEDULES

SPECIMEN

(c) Page 3 of Format 802-2.

SCHEDULE E—SETTLEMENT EXPENSES *(Item 12)*

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F—SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS *(Item 14)*

NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G—DISPOSAL AND OTHER CREDITS *(Item 16)*

DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product reported on Format 803-3)

NOTE.—Individual items of small amounts may be grouped into a single entry in Schedules A, B, C, D, E, and G.

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SUPPORTING SCHEDULES

SPECIMEN

(d) Page 4 of Format 802–2.

SCHEDULE H—ADVANCE, PROGRESS AND PARTIAL PAYMENTS

DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SUPPORTING SCHEDULES

CERTIFICATE

THE UNDERSIGNED, individually and as an authorized representative of the contractor, certifies that he has examined this settlement proposal and that, to the best of his knowledge and belief:

(1) AS TO CONTRACTOR'S OWN CHARGES.—The proposed settlement *(exclusive of charges set forth in Item 14)* and supporting schedules and explanations have been prepared from the books of account and records of the contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a claim or claims against the United States or an agency thereof; and the charges as stated are fair and reasonable.

(2) AS TO SUBCONTRACTORS' CHARGES.—*(a)* The contractor has examined, or caused to be examined, to an extent he considered adequate in the circumstances, the claims of his immediate subcontractors *(exclusive of claims filed against such immediate subcontractors by their subcontractors)*; *(b)* the settlements on account of immediate subcontractors' own charges are fair and reasonable, said charges are allocable to the terminated portion of this contract and said settlements were negotiated in good faith and are not more favorable to his immediate subcontractors than those which the contractor would make if reimbursement by the Government were not involved; *(c)* the contractor has received from all his immediate subcontractors appropriate certificates with respect to their claims, which certificates are substantially in the form of this certificate; and *(d)* the contractor has no information leading him to doubt *(i)* the reasonableness of the settlements with more remote subcontractors, or *(ii)* that the charges for them are allocable to this contract. Upon receipt by the contractor of amounts covering settlements with his immediate subcontractors, the contractor will pay or credit them promptly with the amounts so received, to the extent that he has not previously done so. The term "subcontractor" as used above includes suppliers.

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

SPECIMEN

§ 1–3.802–3 Format 802–3, Settlement Proposal (Short Form)—fixed-price type contracts.

(a) Page 1 of Format 802–3.

SETTLEMENT PROPOSAL
(SHORT FORM)

FOR USE BY A PRIME CONTRACTOR OR SUBCONTRACTOR IN SETTLEMENT OF A FIXED-PRICE TERMINATED CONTRACT WHEN TOTAL CHARGES CLAIMED ARE LESS THAN $2500.

THIS PROPOSAL APPLIES TO *(Check one)* ☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER	COMPANY
SUBCONTRACT OR PURCHASE ORDER NO(S).	STREET ADDRESS
CONTRACTOR WHO SENT NOTICE OF TERMINATION	
NAME	CITY AND STATE
ADDRESS	NAME OF GOVERNMENT AGENCY / GOVERNMENT PRIME CONTRACT NO.
IF MONEYS PAYABLE UNDER THE CONTRACT HAVE BEEN ASSIGNED, GIVE THE FOLLOWING	
NAME OF ASSIGNEE	CONTRACTOR'S REFERENCE NO. / EFFECTIVE DATE OF TERMINATION
ADDRESS	

SECTION I—STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED: ON HAND: PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	FINISHED: ON HAND: INCLUDED IN THIS PROPOSAL (d)	UNFINISHED OR NOT COMMENCED: TO BE COMPLETED (Partial termination only) (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SECTION II—PROPOSED SETTLEMENT

NO.	ITEM *(Include only items allocable to the terminated portion of contract)*	AMOUNT OF CHARGE
1	CHARGE FOR ACCEPTABLE FINISHED PRODUCT NOT COVERED BY INVOICING *(From Format 803–9)*	$
2	CHARGE FOR WORK IN PROCESS, RAW MATERIAL, ETC., ON HAND *(From Format 803–9)*	$
3	OTHER CHARGES INCLUDING PROFIT AND SETTLEMENT EXPENSES	$
4	CHARGES FOR SETTLEMENT(S) WITH SUBCONTRACTORS	$
5	GROSS PROPOSED SETTLEMENT *(Items 1 thru 4)*	$
6	DISPOSAL AND OTHER CREDITS *(From Format 803–9, Col. g)*	$
7	NET PROPOSED SETTLEMENT *(Item 5 less 6)*	$
8	ADVANCE, PROGRESS AND PARTIAL PAYMENTS	$
9	NET PAYMENT REQUESTED *(Item 7 less 8)*	$

List your inventory on Format 803–9 and attach a copy hereto. Retain for the applicable period specified in the prime contract all papers and records relating to this proposal for future examination by your customer or by the contracting officer.

GIVE A BRIEF EXPLANATION OF HOW YOU ARRIVED AT THE AMOUNTS SHOWN IN ITEMS 3, 4, 6 AND 7

THE UNDERSIGNED CERTIFIES THAT THE ABOVE PROPOSED SETTLEMENT INCLUDES ONLY CHARGES ALLOCABLE TO THE TERMINATED PORTION OF THE CONTRACT OR PURCHASE ORDER, THAT THE TOTAL CHARGES *(item 5)* AND THE DISPOSAL CREDITS *(item 6)* ARE FAIR AND REASONABLE, AND THAT THIS PROPOSAL HAS BEEN PREPARED WITH KNOWLEDGE THAT IT WILL, OR MAY, BE USED DIRECTLY OR INDIRECTLY AS A BASIS FOR SETTLEMENT OF A CLAIM OR CLAIMS AGAINST THE UNITED STATES OR AN AGENCY THEREOF.	NAME OF YOUR COMPANY	
	BY *(Signature of authorized official)*	
	TITLE	DATE

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SUPPORTING SCHEDULES

SPECIMEN

(b) Page 2 of Format 802-3.

INSTRUCTIONS

1. This settlement proposal should be submitted to the contracting officer, if you are a prime contractor, or to your customer, if you are a subcontractor. The term contract as used hereafter includes a sub-contract or a purchase order.

2. Claims which would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract should be consolidated wherever possible, and must not be divided in such a way as to bring them below $2,500.00.

3. You should review any provisions of your contract relating to termination and consult your customer or contracting officer for further information. Government regulations pertaining to the basis for determining a fair and reasonable termination settlement are contained in Part 1-8, Federal Procurement Regulations (41 CFR 1-8). Your claim for fair compensation should be prepared on the basis of the costs shown by your accounting records. Where your costs are not so shown, you may use any reasonable basis for estimating your costs which will provide for fair compensation for the preparations made and work done for the terminated portion of the contract, including a reasonable profit on such preparation and work.

4. Generally your settlement proposal may include under items 2, 3, and 4, the following:

(a) COSTS.—Costs incurred which are reasonably necessary and are properly allocable to the terminated portion of your contract under recognized commercial accounting practices, including direct and indirect manufacturing, selling and distribution, administrative, and other costs and expenses incurred.

(b) SETTLEMENT WITH SUBCONTRACTORS.—Reasonable settlements of claims of subcontractors allocable to the terminated portion of the sub-contract. Copies of such settlements will be attached hereto.

(c) SETTLEMENT EXPENSES.—Reasonable costs of protecting and preserving termination inventory in your possession and preparing of your claim.

(d) PROFIT.—A reasonable profit with respect to the preparations you have made and work you have actually done for the terminated portion of your contract. No profit should be included with respect to work which has not been done, nor shall profit be included with respect to settlement expenses, or with respect to settlement with subcontractors.

5. If you use this form, your total charges being claimed (line 5), must be less than $2,500.00. The government has the right to examine your books and records relative to this proposal, and if you are a subcontractor your customer must be satisfied with your proposal.

SPECIMEN

§ 1-8.802-4 Format 802-4, Settlement Proposal for Cost-Reimbursement Type Contracts.

SETTLEMENT PROPOSAL FOR COST-REIMBURSEMENT TYPE CONTRACTS

To be used by prime contractors submitting termination claims on cost-reimbursement type contracts under Part 1-8 of the Federal Procurement Regulations (41 CFR 1-8). Also suitable for use in connection with terminated cost-reimbursement type subcontracts.

COMPANY	PROPOSAL NUMBER	CHECK ONE ☐ PARTIAL ☐ FINAL
STREET ADDRESS	GOVERNMENT PRIME CONTRACT NO.	REFERENCE NO.
CITY AND STATE	EFFECTIVE DATE OF TERMINATION	

ITEM (a)	TOTAL PREVIOUSLY SUBMITTED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)	TOTAL SUBMITTED TO DATE (d)
1. DIRECT MATERIAL	$	$	$
2. DIRECT LABOR			
3. INDIRECT FACTORY EXPENSE			
4. DIES, JIGS, FIXTURES AND SPECIAL TOOLS			
5. OTHER COSTS			
6. GENERAL AND ADMINISTRATIVE EXPENSE			
7. TOTAL COSTS (Items 1 thru 6)	$	$	$
8. FEE			
9. SETTLEMENT EXPENSES			
10. SETTLEMENTS WITH SUBCONTRACTORS			
11. GROSS PROPOSED SETTLEMENT (Items 7 thru 10)			
12. DISPOSAL AND OTHER CREDITS			
13. NET PROPOSED SETTLEMENT (Item 11 less 12)	$	$	$
14. PREVIOUS PAYMENTS TO CONTRACTOR	$	$	$
15. NET PAYMENT REQUESTED (Item 13 less 14)	$		$

SPECIMEN

CERTIFICATE

The undersigned, individually and as an authorized representative of the contractor, certifies that he has examined this settlement proposal and that, to the best of his knowledge and belief:

(1) *AS TO CONTRACTOR'S OWN CHARGES*—The proposed settlement *(exclusive of charges set forth in Item 10)* and supporting schedules and explanations have been prepared from the books of account and records of the contractor in accordance with the terms of the contract; they include only those charges allocable to the terminated contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a claim or claims against the United States or an agency thereof; and the charges as stated are fair and reasonable.

(2) *AS TO SUBCONTRACTORS' CHARGES*—(*a*) The contractor has examined, or caused to be examined, to an extent he considered necessary in the circumstances, the claims of his immediate subcontractors *(exclusive of claims filed against such immediate subcontractors by their subcontractors)*; (*b*) the settlements on account of immediate subcontractors' own charges are fair and reasonable, said charges are allocable to the terminated portion of this contract and said settlements were negotiated in good faith and are not more favorable to his immediate subcontractors than those which the contractor would make if reimbursement by the Government were not involved; (*c*) the contractor has received from all his immediate subcontractors appropriate certificates with respect to their claims, which certificates are substantially in the form of this certificate; and (*d*) the contractor has no information leading him to doubt (i) the reasonableness of the settlements with more remote subcontractors, or (ii) that charges for them are allocable to this contract. Upon receipt by the contractor of amounts covering settlements with his immediate subcontractors, the contractor will pay or credit them promptly with the amounts so received, to the extent that he has not previously done so. The term subcontractor as used above includes suppliers.

NAME OF CONTRACTOR	BY (Signature of authorized official)	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

§ 1-8.803 Formats of inventory schedules.

§ 1-8.803-1 Format 803-1, Inventory Schedule A (Metals in Mill Product Form).

(a) Page 1 of Format 803-1.

INVENTORY SCHEDULE A (METALS IN MILL PRODUCT FORM)

☐ TERMINATION ☐ NONTERMINATION

DATE

THIS SCHEDULE APPLIES TO (Check one): ☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACTS OR PURCHASE ORDERS

PROPERTY CLASSIFICATION (See Instruction on reverse)

PAGE NO. | NO. OF PAGES

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS

PRODUCT COVERED BY CONTRACT OR ORDER

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

COMPANY

STREET ADDRESS

CITY AND STATE

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	DESCRIPTION: Form, Shape, Rolling Treatment (Where applicable, type of edge. Example: HR coiled strip, CR flat sheets hot rod, bking in straight lengths, etc., slit edge, rounded edge, etc.)	Heat Treatment, Temper, Hardness, Finish, etc. (Example: Annealed and pickled, ½ hard, polished, etc.)	Specifications, and Alloy or Other Variable Designation in the Specification	Dimensions: Thickness (Wall for tubing, class for pipe, type for copper water tube)	Width (O. D. for tube diameter of rod, size for pipe, manufacturer's size No. for standard shapes)	Length (A) Feet	Length (A) Inches	Condition (Use N, E, O, R)	Quantity	Unit of Measure	Cost: Unit	Cost: Total	Contractor's Offer or Proceeds of Sale	FOR USE OF CONTRACTING AGENCY ONLY
	(a)	(b)	(b1)	(b2)	(b3)	(b4)	(b5)	(b6)	(c)	(d)	(d1)	(e)	(f)	(g)	

SPECIMEN

INVENTORY SCHEDULE CERTIFICATE

The undersigned, individually and as an authorized representative of the contractor, certifies that he has examined this Inventory Schedule, page numbers to , inclusive, dated ; that in the exercise of his best judgment and to the best of his knowledge, based upon information believed by him to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described therein is allocable to the designated contract and is located at the places specified; if the property reported therein is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that said Schedule does not include any items reasonably usable, without loss to the contractor, on his other work; that the costs shown on said Schedule are in accordance with the contractor's books of account; and that the prices shown in column g, representing the proceeds of authorized sale of the items covered thereby, are fair and reasonable.

The contractor agrees to inform the contracting officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | BY (Signature of authorized official) | TITLE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE | DATE

(b) Page 2 of Format 803-1.

INSTRUCTIONS FOR USE—INVENTORY SCHEDULE A METALS IN MILL PRODUCT FORM

A. CLASSIFICATION

(a) List metals in raw or primary form as furnished by the mill and on which there has been no subsequent fabricating operation. Do not include castings and forgings, which are to be listed on Format 803-3. Use a new form, with continuation sheets if necessary, for each type of metal, and write the name of the metal or alloy in the "Property Classification" block provided in the upper right-hand corner of the form. Examples are:

Alloy Steel	Copper	Aluminum
Carbon Steel	Free Cutting Brass	Silver
Stainless Steel	Manganese Bronze	Tin

(b) In addition, on the sheets for any such metal, list like forms of the metal or alloy together in sequence. For example, on the sheet or sheets used to list Carbon Steel, group together all the strip, then follow with the sheets, then the bar stock, etc.

B. DESCRIPTION (Column b).—Full commercial description and weight is required for all items.

C. CONDITION (Column c).—For purpose of indicating condition of material, the code indicated below should be used. If required the combination of a letter and a number in each instance (as E4 or N2). Use the letter "X," without a number, for material considered to have no further value for use as originally intended, but of possible salvage value other than as scrap. If considered scrap, insert an "S."

CODE: N—NEW

E—Used—reconditioned	1—Excellent
O—Used—usable without repairs	2—Good
R—Used—repairs required	3—Fair
	4—Poor

D. COST (Columns e and f).—Any generally recognized basis for costing inventory may be used, provided it has been regularly used by the contractor and properly reflects his costs.

E. COMMON ITEMS.—Any items of inventory reasonably usable, without loss to the contractor on his other work, because they are materials, parts, or components, common in nature to both the terminated contract and other work of the contractor, are not to be listed except for items the delivery of which has been required by the Government and except for Government-furnished property. (See Inventory Schedule Certificate.)

F. PROCEEDS OF AUTHORIZED SALE (Column g).—Insert the letter "A" after the amount if the sale (or credit for acquisition) has been authorized or approved by the contracting officer or customer. Insert the letter "C" if the amount represents your offer to acquire or sell. In either case, quantity should also be shown (on a second line) if less than the full quantity shown in column d.

G. GOVERNMENT-OWNED PROPERTY

(a) Government-furnished property should be listed on separate sheets marked to show that the items are Government-furnished.

(b) Where title to materials purchased by the contractor is vested in the Government, such materials should be listed and cost data supplied.

H. MISCELLANEOUS

(a) *Separate Schedules.*—If the space provided for any information called for is insufficient, attach separate supporting schedules.

(b) *Continuation Sheets.*—Use Format 803-2 whenever more than one page is required.

(c) *Number of Copies.*—The number of sets of inventory schedules required will be indicated by the contracting officer or the customer from whom the notice of termination is received.

SPECIMEN

§ 1-8.803-2 Format 803-2, Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form).

INVENTORY SCHEDULE A—CONTINUATION SHEET *(METALS IN MILL PRODUCT FORM)*

☐ TERMINATION ☐ NONTERMINATION

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.	PROPERTY CLASSIFICATION *(See Instructions on Format 803-1)*	DATE	PAGE NO.	NO. OF PAGES

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	DESCRIPTION							CONDITION (Use code)	QUANTITY	UNIT OF MEASURE	COST		CONTRACTOR'S OFFER OR PROCEEDS OF SALE	FOR USE OF CONTRACTING AGENCY ONLY
					DIMENSIONS										
		FORM, SHAPE, ROLLING TREATMENT	HEAT TREATMENT, TEMPER, HARDNESS, FINISH, ETC.	SPECIFICATIONS, & ALLOY OR OTHER VARIABLE DESIGNATION IN THE SPECIFICATION	THICKNESS	WIDTH	LENGTH (b5)					UNIT	TOTAL		
	(a)	(b)	(b1)	(b2)	(b3)	(b4)	FEET	INCHES	(c)	(d)	(d1)	(e)	(f)	(g)	

SPECIMEN

§ 1-8.803-3 Format 803-3, Inventory Schedule B.

(a) Page 1 of Format 803-3.

INVENTORY SCHEDULE B ☐ TERMINATION ☐ NONTERMINATION

DATE

☐ RAW MATERIALS *(Other than metals)* ☐ PURCHASED PARTS ☐ FINISHED COMPONENTS ☐ FINISHED PRODUCT ☐ MISCELLANEOUS

PROPERTY CLASSIFICATION *(See Instruction on reverse)* | PAGE NO. | NUMBER OF PAGES

THIS SCHEDULE APPLIES TO *(Check one)*

☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

COMPANY

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

STREET ADDRESS

ADDRESS

CITY AND STATE

PRODUCT COVERED BY CONTRACT OR ORDER

LOCATION OF MATERIAL

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	DESCRIPTION			CONDITION (Use code)	QUANTITY	UNIT OF MEASURE	COST (For finished product, show contract price instead of cost)		CONTRACTOR'S OFFER OR PROCEEDS OF SALE	FOR USE OF CONTRACTING AGENCY ONLY
		ITEM (If property has commercial value, furnish adequate commercial description (See Instr.). Otherwise, furnish description sufficient to enable contracting officer or authorized contractor to determine appropriate disposition thereof. Where practicable, show manufacturer's name, address and catalog number. Where cols. b1 and b2 are not applicable, write col. b entry across the two cols.)	GOVERNMENT PART OR DRAWING NUMBER AND REV. NUMBER	TYPE OF PACKING (Bulk, bbls, crates, etc.)				UNIT	TOTAL		
	(a)	(b)	(b1)	(b2)	(c)	(d)	(d1)	(e)	(f)	(g)	

SPECIMEN

INVENTORY SCHEDULE CERTIFICATE

The undersigned, individually and as an authorized representative of the contractor, certifies that he has examined this Inventory Schedule, page numbers to , inclusive, dated ; that in the exercise of his best judgment and to the best of his knowledge, based upon information believed by him to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described therein is allocable to the designated contract and is located at the places specified; if the property reported therein is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that said Schedule does not include any items reasonably usable, without loss to the contractor, on his other work; that the costs shown on said Schedule are in accordance with the contractor's books of account; and that the prices shown in column g, representing the proceeds of authorized sale of the items covered thereby, are fair and reasonable.

The contractor agrees to inform the contracting officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	TITLE	DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE

(b) Page 2 of Format 803-3.

INSTRUCTIONS FOR USE—INVENTORY SCHEDULE B

RAW MATERIALS • PURCHASED PARTS • FINISHED COMPONENTS • FINISHED PRODUCTS • MISCELLANEOUS

A. CLASSIFICATION.—1. The term "Raw Materials" is here used to include materials in primary form. Examples of the many different general classifications of raw materials (other than metals) include:

Chemical	Rubber	Shoe cut stock
Pulp and paper	Textiles	Cement
Paper board	Kapok	Cork
Plastics (primary forms)	Hair	Cotton
Oils, fats, and waxes	Lumber	Wool
	Hides and skins	Glass
	Leather	

2. Examples of some of the large number of general classifications of parts, components, finished products, or miscellaneous include:

Engines and turbines	Conveyors	Surgical instruments
Compressors and pumps	Fans and blowers	Electric Motors
Insulated wire and cable	Bearings	Drugs
Nuts and bolts	Valves	Ignition Equipment

3. Items having no commercial value may be placed in a single classification designated "No Commercial Value." For items deemed to have commercial value, use a new form for each classification. Insert the name of the classification in the designated block at the upper right-hand corner of the inventory form and arrange the items falling under that classification in sequence under separate subheadings. For example, on the sheet or sheets used to list Chemicals, group separately all Acids, all Alkalis, all Resins, etc. Under the general classification of Insulated Wire and Cable, group separately all Asbestos-Insulated Copper Wire, all Rubber-Insulated Copper Wire, all Magnet Wire, etc. On the sheets for Drugs, group separately all Antitoxins, all Vaccines, all Strychnine Derivatives, all Morphine Derivatives, etc.

B. DESCRIPTION (*Column b*).—A full commercial description is required for all items which have commercial value. For other items, furnish only such description as is sufficient to enable the contracting officer or the customer to determine the appropriate disposition. Where there is doubt as to the extent of the description required, consult the contracting officer or the customer.

C. CONDITION (*Column c*).—For purpose of indicating condition of material, the code indicated below should be used. It requires the combination of a letter and a number in each instance (as E4 or N2). Use the letter "X" without a number, for material considered to have no further value for use as originally intended, but of possible salvage value other than as scrap. If considered scrap, insert on "S."

CODE: N—New	1—Excellent
E—Used—reconditioned	2—Good
O—Used—usable without repairs	3—Fair
R—Used—repairs required	4—Poor

D. COST (*Columns e and f*).—Any generally recognized basis for costing inventory may be used, provided it has been regularly used by the contractor and properly reflects his costs.

E. COMMON ITEMS:—Any items of inventory reasonably usable, without loss to the contractor on his other work, because they are materials, parts, or components, common in nature to both the terminated contract and other work of the contractor, are not to be listed except for items the delivery of which has been required by the Government and except for Government-furnished property. (*See Inventory Schedule Certificate.*)

F. PROCEEDS OF AUTHORIZED SALE (*Column g*).—Insert the letter "A" after the amount of the sale (*or credit for acquisition*) has been authorized or approved by the contracting officer or customer. Insert the letter "C" if the amount represents your offer to acquire or sell. In either case, quantity should also be shown (*on a second line*) if less than the full quantity shown in column d.

G. GOVERNMENT-OWNED PROPERTY

(*a*) Government-furnished property should be listed on separate sheets, marked to show that the items are Government-furnished.

(*b*) Where title to materials purchased by the contractor is vested in the Government, such materials should be listed and cost data supplied.

H. MISCELLANEOUS

(*a*) *Separate Schedules.*—If the space provided for any information called for is insufficient, attach separate supporting schedules.

(*b*) *Continuation Sheets.*—Use Format 803-4 whenever more than one page is required.

(*c*) *Number of Copies.*—The number of sets of inventory schedules required will be indicated by the contracting officer or the customer from whom the notice of termination is received.

SPECIMEN

§ 1-8.803-4 Format 803-4, Inventory Schedule B—Continuation Sheet.

INVENTORY SCHEDULE B—CONTINUATION SHEET ☐ TERMINATION ☐ NONTERMINATION

☐ RAW MATERIALS (*Other than Metals*) ☐ PURCHASED PARTS ☐ FINISHED COMPONENTS ☐ FINISHED PRODUCT ☐ MISCELLANEOUS

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.	PROPERTY CLASSIFICATION (*See Instruction on Format 803-3*)	DATE	PAGE NO.	NO. OF PAGES

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM (b)	DESCRIPTION: GOVERNMENT PART OR DRAWING NUMBER AND REV. NUMBER (b1)	DESCRIPTION: TYPE OF PACKING (Bulk, bbls, crates, etc.) (b2)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST (*For finished product, show contract price instead of cost*): UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER OR PROCEEDS OF SALE (g)	FOR USE OF CONTRACTING AGENCY ONLY

SPECIMEN

§ 1–8.803–5 Format 803–5, Inventory Schedule C (Work in Process).

(a) Page 1 of Format 803–5.

INVENTORY SCHEDULE C *(WORK IN PROCESS)*

☐ TERMINATION ☐ NONTERMINATION

DATE	PAGE NO.	NO. OF PAGES
SEE REVERSE FOR INSTRUCTIONS		

THIS SCHEDULE APPLIES TO *(Check one)*

☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

CONTRACTOR WHO WAS NOTIFIED OF TERMINATION

COMPANY	
NAME	STREET ADDRESS
ADDRESS	CITY AND STATE
PRODUCT COVERED BY CONTRACT OR ORDER	LOCATION OF MATERIAL

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION — ITEM (If property has commercial value, furnish adequate commercial description. Otherwise furnish description sufficient to enable contracting officer or authorized contractor to determine appropriate disposition thereof.) (b)	ESTIMATED WEIGHT (b1)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST (Information in Column e need not be given if not reasonably available) — UNIT (e)	TOTAL (f)	CONTRACTOR'S OFFER OR PROCEEDS OF SALE (g)	FOR USE OF CONTRACTING AGENCY ONLY

SPECIMEN

INVENTORY SCHEDULE CERTIFICATE

The undersigned, individually and as an authorized representative of the contractor, certifies that he has examined this Inventory Schedule, page numbers to , inclusive, dated ; that in the exercise of his best judgment and to the best of his knowledge, based upon information believed by him to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described therein is allocable to the designated contract and is located at the places specified; if the property reported therein is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that said Schedule does not include any items reasonably usable, without loss to the contractor, on his other work; that the costs shown on said Schedule are in accordance with the contractor's books of account; and that the prices shown in column g, representing the proceeds of authorized sale of the items covered thereby, are fair and reasonable.

The contractor agrees to inform the contracting officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY (Signature of authorized official)	TITLE	DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE

(b) Page 2 of Format 803–5.

INSTRUCTIONS FOR USE—INVENTORY SCHEDULE C
WORK IN PROCESS

A. CLASSIFICATION.—No classification of items is required. Finished components are not to be listed on this form but on Format 803–3. Other items which have not lost their identity through whole or partial assembly and which are deemed to have further commercial use are also to be listed on Format 803–3.

B. DESCRIPTION (*Column b*).—Furnish such description as is sufficient to enable the contracting officer or the customer to determine the appropriate disposition.

C. CONDITION (*Column c*).—For material considered to have possible salvage value other than scrap, insert an "X." If considered scrap, insert an "S."

D. COST (*Columns e and f*).—Any generally recognized basis for costing inventory may be used, provided it has been regularly used by the contractor and properly reflects his costs.

E. COMMON ITEMS.—Any items of inventory reasonably usable, without loss to the contractor on his other work, because they are materials, parts, or components, common in nature to both the terminated contract and other work of the contractor, are not to be listed except for items the delivery of which has been required by the Government and except for Government-furnished property. (*See Inventory Schedule Certificate.*)

F. PROCEEDS OF AUTHORIZED SALE (*Column g*).—Insert the letter "A" after the amount if the sale (*or credit for acquisition*) has been authorized or approved by the contracting officer or customer. Insert the letter "C" if the amount represents your offer to acquire or sell. In either case, quantity should also be shown (*on a second line*) if less than the full quantity shown in column d.

G. GOVERNMENT-OWNED PROPERTY

(*a*) Government-furnished property should be listed on separate sheets, marked to show that the items are Government-furnished.

(*b*) Where title to materials purchased by the contractor is vested in the Government, such materials should be listed and cost data supplied.

H. MISCELLANEOUS

(*a*) *Separate Schedules.*—If the space provided for any information called for is insufficient, attach separate supporting schedules.

(*b*) *Continuation Sheets.*—Use Format 803–6 whenever more than one page is required.

(*c*) *Number of copies.*—The number of sets of inventory schedules required will be indicated by the contracting officer or the customer from whom the notice of termination is received.

SPECIMEN

§ 1–8.803–6 Format 803–6, Inventory Schedule C—Continuation Sheet (Work in Process).

INVENTORY SCHEDULE C—CONTINUATION SHEET *(WORK IN PROCESS)*

☐ TERMINATION ☐ NONTERMINATION

GOVERNMENT PRIME CONTRACT NUMBER	SUBCONTRACT OR P.O. NO.	REFERENCE NUMBER	DATE	PAGE NO.	NO. OF PAGES

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. a	DESCRIPTION ITEM b	ESTIMATED WEIGHT b1	CONDITION c (Use code)	QUANTITY d	UNIT OF MEASURE d1	COST UNIT e	COST TOTAL f	CONTRACTOR'S OFFER OR PROCEEDS OF SALE g	FOR USE OF CONTRACTING AGENCY ONLY

SPECIMEN

§ 1–8.803–7 Format 803–7, Inventory Schedule D (Dies, Jigs, Fixtures, etc., and Special Tools).

(a) Page 1 of Format 803–7.

INVENTORY SCHEDULE D *(DIES, JIGS, FIXTURES, ETC., AND SPECIAL TOOLS)*

☐ TERMINATION ☐ NONTERMINATION

DATE

PROPERTY CLASSIFICATION *(See Instruction on reverse)* | PAGE NO. | NO. OF PAGES

THIS SCHEDULE APPLIES TO *(Check one)*

☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACTOR(S) OR PURCHASE ORDER(S)

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS

PRODUCT COVERED BY CONTRACT OR ORDER

GOVERNMENT PRIME CONTRACT NUMBER | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

COMPANY

STREET ADDRESS

CITY AND STATE

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION *(If property has commercial value, furnish adequate commercial description. Otherwise furnish description sufficient to enable contracting officer or authorized contractor to determine appropriate disposition thereof. Where practicable, show manufacturer's name, address, and catalog No.)* (b)	CONDITION (Use code) (c)	QUANTITY (d)	COST UNIT (e)	COST TOTAL (f)	APPLICABLE TO THIS CONTRACT: TO ENTIRE CONTRACT (11)	APPLICABLE TO THIS CONTRACT: TO PORTION NOT TO BE COMPLETED (12)	CONTRACTOR'S OFFER OR PROCEEDS OF SALE (g)	FOR USE OF CONTRACTING AGENCY ONLY

SPECIMEN

INVENTORY SCHEDULE CERTIFICATE

The undersigned, individually and as an authorized representative of the contractor, certifies that he has examined this Inventory Schedule, page numbers to , inclusive, dated , that to the exercise of his best judgment and to the best of his knowledge, based upon information believed by him to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described therein is allocable to the designated contract and is located at the places specified; if the property reported therein is termination inventory, that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that said Schedule does not include any items reasonably usable, without loss to the contractor, on his other work; that the costs shown on said Schedule are in accordance with the contractor's books of account; and that the prices shown in column g, representing the proceeds of authorized sale of the items covered thereby, are fair and reasonable.

The contractor agrees to inform the contracting officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	TITLE	DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE

(b) Page 2 of Format 803-7.

INSTRUCTIONS FOR USE—INVENTORY SCHEDULE D
DIES, JIGS, FIXTURES, ETC., AND SPECIAL TOOLS

A. CLASSIFICATION

a. Items having no commercial value may be placed in a single classification designated "No Commercial Value." For items deemed to have commercial value, general classifications may be limited to the following:

Dies Jigs Gauges Fixtures Special Tools

b. Use a new form for each such general classification. Insert the name of the classification in the designated block in the upper right-hand corner of the form and list the items falling under that classification in sequence. For example, on the sheet used to list Dies, group separately all Extruding Dies, all Forging Dies, all Forming Dies, etc. On the sheet used for Gauges, group separately all Thread Gauges, all Radius Gauges, all Depth Gauges, etc. Whenever possible, listing of Special Tools should identify the names and numbers of the parts for which the tools are used, using the Government part number where assigned.

B. DESCRIPTION (Column b).—An adequate commercial description is required for all items which have commercial value. For other items, furnish description sufficient to enable the contracting officer or the customer to determine the appropriate disposition. Also indicate weight for each item.

C. CONDITION (Column c).—For purpose of indicating condition of material, the code indicated below should be used. It requires the combination of a letter and a number in each instance (as E4 or N2). Use the letter "X," without a number, for material considered to have no further value for use as originally intended, but of possible salvage value other than as scrap. If considered scrap, insert an "S."

CODE: N—New
E—Used—reconditioned
O—Used—usable without repairs
R—Used—repairs required

1—Excellent
2—Good
3—Fair
4—Poor

D. COSTS (Columns e and f).—Any generally recognized basis for costing inventory may be used, provided it has been regularly used by the contractor and properly reflects his costs.

E. COMMON ITEMS.—Any items of inventory reasonably usable, without loss to the contractor on his other work, because they are materials, parts, or components, common in nature to both the terminated contract and other work of the contractor, are not to be listed except for items the delivery of which has been required by the Government and except for Government-furnished property. (See Inventory Schedule Certificate.)

F. PROCEEDS OF AUTHORIZED SALE (Column g).—Insert the letter "A" after the amount if the sale (or credit for acquisition) has been authorized or approved by the contracting officer or customer. Insert the letter "C" if the amount represents your offer to acquire or sell. In either case, quantity should also be shown (on a second line) if less than the full quantity shown in Column d.

G. GOVERNMENT-OWNED PROPERTY

(a) Government-furnished property should be listed on separate sheets, marked to show that the items are Government-furnished.

(b) Where title to materials purchased by the contractor is vested in the Government, such materials should be listed and cost data supplied.

H. MISCELLANEOUS

(a) Separate Schedules.—If the space provided for any information called for is insufficient, attach separate supporting schedules.

(b) Continuation Sheets.—Use Format 803-8 whenever more than one page is required.

(c) Number of Copies.—The number of sets of inventory schedules required will be indicated by the contracting officer or the customer from whom the notice of termination is received.

SPECIMEN

§ 1-8.803-8 Format 803-8, Inventory Schedule D—Continuation Sheet (Dies, Jigs, Fixtures, etc., and Special Tools).

INVENTORY SCHEDULE D—CONTINUATION SHEET (DIES, JIGS, FIXTURES, ETC., AND SPECIAL TOOLS)

☐ TERMINATION ☐ NONTERMINATION

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.	PROPERTY CLASSIFICATION (See instruction on Format 803-7)	DATE	PAGE NO.	NO. OF PAGES

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION (b)	CONDITION (Use code) (c)	QUANTITY (d)	COST: UNIT (e)	COST: TOTAL (f)	APPLICABLE TO THIS CONTRACT: TO ENTIRE CONTRACT (f1)	APPLICABLE TO THIS CONTRACT: TO PORTION NOT TO BE COMPLETED (f2)	CONTRACTOR'S OFFER OR PROCEEDS OF SALE (g)	FOR USE OF CONTRACTING AGENCY ONLY

SPECIMEN

§ 1–8.803–9 Format 803–9, Termination Inventory Schedule E (Short Form for Use with Format 802–3 Only).

(a) Page 1 of Format 803–9.

TERMINATION INVENTORY SCHEDULE E
(SHORT FORM FOR USE WITH FORMAT 802–3 ONLY)

DATE | PAGE NO. | NO. OF PAGES

THIS SCHEDULE APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS

PRODUCT COVERED BY TERMINATED CONTRACT OR ORDER

GOVERNMENT PRIME CONTRACT NUMBER | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

COMPANY

STREET ADDRESS

CITY AND STATE

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM (If property has commercial value, furnish adequate commercial description. Otherwise, furnish description sufficient to enable contracting officer or authorized contractor to determine appropriate disposition thereof. Where applicable show manufacturer's name, address, and catalog number. Where cols. b1 and b2 are not applicable, write col. b entry across these two cols.) (b)	GOVERNMENT PART OR DRAWING NUMBER AND REV. NUMBER (b1)	TYPE OF PACKING (Bulk, bdls., crates, etc.) (b2)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST (For finished product, show contract price instead of cost): UNIT (e)	TOTAL (f)	CONTRACTOR'S OFFER OR PROCEEDS OF SALE (g)	FOR USE OF CONTRACTING AGENCY ONLY

SPECIMEN

TERMINATION INVENTORY SCHEDULE CERTIFICATE

The undersigned, individually and as an authorized representative of the contractor, certifies that he has examined this Termination Inventory Schedule, page numbers to , inclusive, dated ; that in the exercise of his best judgment and to the best of his knowledge, based upon information believed by him to be reliable, said Schedule has been prepared in accordance with applicable instructions; that the inventory described therein is allocable to the designated contract and is located at the places specified; that the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; that said Schedule does not include any items reasonably usable, without loss to the contractor, on his other work; that the costs shown on said Schedule are in accordance with the contractor's books of account; and that the prices shown in column g, representing the proceeds of authorized sale of the items covered thereby, are fair and reasonable.

The contractor agrees to inform the contracting officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | BY *(Signature of authorized official)* | TITLE | DATE

NAME OF REPRESENTATIVE ACCOUNTING OFFICIAL | TITLE

(b) Page 2 of Format 803–9.

INSTRUCTIONS FOR USE—TERMINATION INVENTORY SCHEDULE *(Short Form)*
FOR USE WITH FORMAT 802–3 ONLY

A. CLASSIFICATION.—No specific classification required but similar items should be grouped together. Several classifications may be listed on one form.

B. DESCRIPTION (Column b).—A full commercial description is required for all items which have commercial value. For other items, furnish only such description as is sufficient to enable the contracting officer or the customer to determine the appropriate disposition.

C. CONDITION (Column c).—For purposes of indicating condition of material, the code indicated below should be used. It requires the combination of a letter and a number in each instance (as E4 or N2). Use the letter "X," without a number for material considered to have no further value for use as originally intended, but of possible salvage value other than as scrap. If considered scrap, insert an "S."

CODE: N —New	1—Excellent
E —Used—reconditioned	2—Good
O —Used—usable without repairs	3—Fair
R —Used—repairs required	4—Poor

D. COST (Columns e and f).—Any generally recognized basis for costing inventory may be used, provided it has been regularly used by the contractor and properly reflects his costs.

E. COMMON ITEMS.—Any items of inventory reasonably usable, without loss to the contractor on his other work, because they are materials, parts, or components, common in nature to both the terminated contract and other work of the contractor, are not to be listed except for items the delivery of which has been required by the Government and except for Government-furnished property (See Inventory Schedule Certificate.)

F. PROCEEDS OF AUTHORIZED SALE (Column g).—Insert the letter "A" after the amount if the sale (or credit for acquisition) has been authorized or approved by the contracting officer or customer. Insert the letter "C" if the amount represents your offer to acquire or sell. In either case, quantity should be also shown (on a second line) if less than the full quantity shown in Column d.

G. GOVERNMENT-OWNED PROPERTY

(a) Government-furnished property should be listed on separate sheets, marked to show that the items are Government-furnished.

(b) Where title to materials purchased by the contractor is vested in the Government, such materials should be listed and cost data supplied.

H. MISCELLANEOUS

(a) Separate Schedules.—If the space provided for any information called for is insufficient, attach separate supporting schedules.

(b) Number of Copies.—The number of sets of inventory schedules required will be indicated by the contracting officer or the customer from whom the notice of termination is received.

SPECIMEN

§ 1–8.804 Formats of miscellaneous forms.

§ 1–8.804–1 Format 804–1, Schedule of Accounting Information.

(a) Page 1 of Format 804–1.

SCHEDULE OF ACCOUNTING INFORMATION

To be used by prime contractors submitting termination claims under Part 1–8 of the Federal Procurement Regulations (41CFR 1–8). Also suitable for use by subcontractor in effecting subcontract settlements with prime contractor or intermediate subcontractors.

THIS PROPOSAL APPLIES TO *(Check one)* ☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NO.(S)

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS

COMPANY

STREET ADDRESS

CITY AND STATE

NAME OF GOVERNMENT AGENCY

GOVT. PRIME CONTRACT NO.	CONTRACTOR'S REFERENCE NO.	EFFECTIVE DATE OF TERMINATION

1. INDIVIDUAL IN YOUR ORGANIZATION FROM WHOM ADDITIONAL INFORMATION MAY BE REQUESTED ON QUESTIONS RELATING TO:

ACCOUNTING MATTERS		PROPERTY DISPOSAL	
NAME		NAME	
TITLE	TELEPHONE NO.	TITLE	TELEPHONE NO.
ADDRESS		ADDRESS	

2. ARE THE ACCOUNTS OF THE CONTRACTOR SUBJECT TO REGULAR PERIODIC EXAMINATION BY INDEPENDENT PUBLIC ACCOUNTANTS? ☐ YES ☐ NO
(Name and address of accountants)

3. INDEPENDENT ACCOUNTANTS, IF ANY, WHO HAVE REVIEWED OR ASSISTED IN THE PREPARATION OF THE ATTACHED PROPOSAL

NAME	ADDRESS

4. GOVERNMENTAL AGENCY WHICH HAS REVIEWED YOUR ACCOUNTS IN CONNECTION WITH A PRIOR SETTLEMENT PROPOSAL DURING THE CURRENT AND PRECEDING FISCAL YEAR

NAME	ADDRESS

5. HAVE THERE BEEN ANY SIGNIFICANT DEVIATIONS FROM YOUR REGULAR ACCOUNTING PROCEDURES AND POLICIES IN ARRIVING AT THE COSTS SET FORTH IN THE ATTACHED PROPOSAL? ☐ YES ☐ NO. IF "YES," EXPLAIN BRIEFLY

6. WERE THE DETAILED COST RECORDS USED IN PREPARING THE PROPOSAL CONTROLLED BY AND IN AGREEMENT WITH YOUR GENERAL BOOKS OF ACCOUNT? ☐ YES ☐ NO

7. WERE INVENTORY QUANTITIES BASED ON A PHYSICAL COUNT AS OF THE DATE OF TERMINATION? ☐ YES ☐ NO. IF "NO," EXPLAIN EXCEPTIONS

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SCHEDULES

SPECIMEN

(b) Page 2 of Format 804–1.

8. IS THIS SETTLEMENT PROPOSAL BASED ON STANDARD COSTS? ☐ YES ☐ NO. IF "YES," HAS ADJUSTMENT TO ACTUAL COST OR ADJUSTMENT FOR ANY SIGNIFICANT VARIATIONS BEEN MADE? ☐ YES ☐ NO. IF "NO," EXPLAIN

9. DOES THIS PROPOSAL INCLUDE CHARGES FOR MAJOR INVENTORY ITEMS AND CLAIMS OF SUBCONTRACTORS COMMON TO THIS TERMINATED CONTRACT AND OTHER WORK OF THE CONTRACTOR? ☐ YES ☐ NO. IF "YES," EXPLAIN THE METHOD USED IN ALLOCATING AMOUNTS TO THE TERMINATED PORTION OF THIS CONTRACT

10. EXPLAIN BRIEFLY YOUR METHOD OF PRICING INVENTORIES, INDICATING WHETHER MATERIAL HANDLING COST HAS BEEN INCLUDED IN CHARGES FOR MATERIALS

11. ARE ANY PARTS, MATERIALS, OR FINISHED PRODUCT, KNOWN TO BE DEFECTIVE, INCLUDED IN THE INVENTORIES? ☐ YES ☐ NO. IF "YES," EXPLAIN

12. HAVE ANY CHARGES BEEN INCLUDED IN THIS PROPOSAL IN RESPECT OF SEVERANCE, DISMISSAL, OR SEPARATION PAY? ☐ YES ☐ NO. IF "YES," FURNISH BRIEF EXPLANATION AND ESTIMATES OF AMOUNTS INCLUDED

13. DOES THIS PROPOSAL INCLUDE ANY ELEMENT OF PROFIT TO THE CONTRACTOR OR A RELATED ORGANIZATION, OTHER THAN PROFIT SET FORTH SEPARATELY IN THE PROPOSAL OR INCLUDED IN THE CONTRACT PRICE AT WHICH ACCEPTABLE FINISHED PRODUCT, IF ANY, IS INCLUDED IN THE PROPOSAL? ☐ YES ☐ NO. IF "YES," EXPLAIN BRIEFLY

14. DESCRIBE BRIEFLY THE NATURE OF INDIRECT EXPENSE ITEMS INCLUDED IN INVENTORY COSTS *(see Schedule A, Format 802–1)*; AND EXPLAIN YOUR METHOD OF ALLOCATION USED IN PREPARING THIS PROPOSAL, INCLUDING IF PRACTICABLE, THE RATES USED AND THE PERIOD OF TIME UPON WHICH THEY ARE BASED

15. DO THE COSTS SET FORTH IN THE ATTACHED PROPOSAL INCLUDE PROVISIONS FOR ANY RESERVES OTHER THAN DEPRECIATION RESERVES? ☐ YES ☐ NO. IF "YES," LIST SUCH RESERVES

16. STATE METHOD OF ACCOUNTING FOR TRADE AND CASH DISCOUNTS EARNED, REBATES, ALLOWANCES, AND VOLUME PRICE ADJUSTMENTS. ARE SUCH ITEMS EXCLUDED FROM COSTS CLAIMED? ☐ YES ☐ NO

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SCHEDULES

SPECIMEN

(c) Page 3 of Format 804–1.

17. STATE POLICIES RELATING TO RECORDING OF OVERTIME, SHIFT PREMIUMS AND PRODUCTION BONUSES

18. DOES CONTRACTOR HAVE A PENSION PLAN? ☐ YES ☐ NO. IF "YES," STATE METHOD OF FUNDING AND ABSORPTION OF PAST AND CURRENT PENSION SERVICE COSTS

19. STATE GENERAL POLICIES RELATING TO DEPRECIATION AND AMORTIZATION OF FIXED ASSETS; BASES, UNDERLYING POLICIES

20. STATE POLICY OR PROCEDURE FOR RECORDING AND WRITING OFF STARTING LOAD

21. ARE PERISHABLE TOOLS AND MANUFACTURING SUPPLIES CHARGED DIRECTLY TO CONTRACT COSTS OR INCLUDED IN OVERHEAD EXPENSES?

22. POLICIES FOR DISTINGUISHING BETWEEN CHARGES TO CAPITAL *(fixed)* ASSET ACCOUNTS AND TO REPAIR AND MAINTENANCE ACCOUNTS

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SCHEDULES

3

SPECIMEN

(d) Page 4 of Format 804–1.

23. METHOD OF RECORDING AND ABSORBING (1) GENERAL ENGINEERING AND GENERAL DEVELOPMENT EXPENSE AND (2) ENGINEERING AND DEVELOPMENT EXPENSE DIRECTLY APPLICABLE TO THE TERMINATED CONTRACT

24. TYPES AND SOURCE OF MISCELLANEOUS INCOME AND CREDITS AND MANNER OF RECORDING IN THE INCOME OR THE COST ACCOUNTS SUCH AS RENTAL OF YOUR FACILITIES TO OUTSIDE PARTIES, ETC.

25. ARE COSTS AND INCOME FROM CHANGE ORDERS SEGREGATED FROM OTHER CONTRACT COSTS AND INCOME? ☐ YES ☐ NO. IF "YES" BY WHAT METHOD?

26. ARE SETTLEMENT EXPENSES APPLICABLE TO PREVIOUSLY TERMINATED CONTRACTS EXCLUDED FROM THE ATTACHED PROPOSALS? ☐ YES ☐ NO. IF "NO" EXPLAIN

27. STATE POLICY AND PROCEDURE FOR VERIFICATION AND NEGOTIATION OF SETTLEMENTS WITH SUBCONTRACTORS AND VENDORS

28. METHOD OF COMPUTING PROFIT CLAIMED IN THE ATTACHED PROPOSAL AND REASON FOR SELECTING THE METHOD USED. FURNISH ESTIMATE OF AMOUNT OR RATE OF PROFIT IN DOLLARS OR PERCENT ANTICIPATED HAD THE CONTRACT BEEN COMPLETED

29. WHAT IS LENGTH OF TIME *(production cycle)* REQUIRED TO PRODUCE ONE OF THE END ITEMS FROM THE TIME THE MATERIAL ENTERS THE PRODUCTION LINE TO THE COMPLETION AS THE FINISHED PRODUCT?

30. METHOD OF ALLOCATING GENERAL AND ADMINISTRATIVE EXPENSE

CERTIFICATE

I HEREBY CERTIFY THAT, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THE ABOVE STATEMENTS ARE TRUE AND CORRECT.

NAME OF CONTRACTOR	BY *(Signature of supervisory accounting official)*	
	TITLE	DATE

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SCHEDULES

4

SPECIMEN

§ 1-8.804-2 Format 804-2, Application for Partial Payment.

(a) Page 1 of Format 804-2.

APPLICATION FOR PARTIAL PAYMENT

For use by Prime Contractor or Subcontractor under contracts terminated for the convenience of the Government

THIS APPLICATION APPLIES TO *(Check one)* ☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

SUBCONTRACT OR PURCHASE ORDER NUMBER(S)

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS

IF CONTRACTOR HAS GUARANTEED LOANS OR HAS ASSIGNED MONEYS DUE UNDER CONTRACT, GIVE THE FOLLOWING:

NAME AND ADDRESS OF FINANCING INSTITUTION

NAME AND ADDRESS OF GUARANTOR

NAME AND ADDRESS OF ASSIGNEE

APPLICANT

STREET ADDRESS

CITY AND STATE

NAME OF GOVERNMENT AGENCY

GOVERNMENT PRIME CONTRACT NUMBER

CONTRACTOR'S REFERENCE NUMBER

EFFECTIVE DATE OF TERMINATION | DATE OF THIS APPLICATION

AMOUNT REQUESTED $ | APPLICATION NUMBER UNDER THIS TERMINATION

SECTION I.—STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED: PREVIOUSLY SHIPPED AND INVOICED (b)	FINISHED: ON HAND: PAYMENT TO BE RECEIVED THEREON INVOICED (c)	FINISHED: ON HAND: INCLUDED IN THIS APPLICATION (d)	UNFINISHED OR NOT COMMENCED: TO BE COMPLETED (e)	UNFINISHED OR NOT COMMENCED: NOT TO BE COMPLETED (f)	TOTAL COVERED BY CONTRACT OR ORDER (g)
	QUANTITY						
	$						
	QUANTITY						
	$						
	QUANTITY						
	$						

SPECIMEN

SECTION II.—APPLICANT'S OWN TERMINATION CHARGES
(Exclusive of his Subcontractors' Charges)

SETTLEMENT PROPOSAL ☐ ATTACHED ☐ PREVIOUSLY SUBMITTED

NO.	ITEM	CHARGES AS LISTED IN SETTLEMENT PROPOSAL
1	ACCEPTABLE FINISHED PRODUCT *(at contract price)*	$
2	WORK IN PROCESS	
3	RAW MATERIALS, PURCHASED PARTS, AND SUPPLIES	
4	GENERAL AND ADMINISTRATIVE EXPENSE	
5	TOTAL *(sum of lines 1, 2, 3, and 4)*	$
6	TOOLS, DIES, JIGS, FIXTURES, ETC.	
7	OTHER COSTS	
8	SETTLEMENT EXPENSES	
9	TOTAL *(sum of lines 5, 6, 7, and 8)*	$
10	SUBCONTRACTOR SETTLEMENTS APPROVED BY CONTRACTING OFFICER OR SETTLED UNDER A DELEGATION OF AUTHORITY AND PAID BY APPLICANT	$
	AMOUNTS RECEIVED	
a	UNLIQUIDATED PARTIAL, PROGRESS, AND ADVANCE PAYMENTS RECEIVED	$
b	DISPOSAL AND OTHER CREDITS	
c	TOTAL *(sum of lines a and b)*	
d	AMOUNT OF PARTIAL PAYMENT REQUESTED	
e	TOTAL *(sum of lines c and d)*	$

1

(b) Page 2 of Format 804-2.

SECTION III.—AGREEMENT OF APPLICANT

IN CONSIDERATION OF ANY PARTIAL PAYMENT WHICH MAY BE MADE, THE APPLICANT AGREES AS FOLLOWS:

(1) REPAYMENT OF EXCESS.—If any partial payment made to the contractor is in excess of the amount finally determined to be due on his termination claim, the excess shall be repaid to the Government upon demand, with interest at the rate of 6 percent per annum. Interest shall be computed for the period from the date of the excess payment to the date of repayment, except that (i) no interest shall be charged for any such excess payment attributable to a reduction in the contract termination claim by reason of retention or other disposition of termination inventory, until 10 days after the date of such retention or disposition, or such later date as determined by the contracting officer by reason of the circumstances, and (ii) no interest shall be charged for overpayment under cost-reimbursement type research and development contracts *(without profit or fee to the contractor)* if the overpayments are repaid to the Government within 30 days after demand.

(2) PROMPT SETTLEMENT OF CLAIM.—The applicant will make every reasonable effort to expedite final settlement of the termination claim and the claims of his subcontractors, if any.

(3) DISPOSAL AND RETENTION OF INVENTORY.—Whenever the amount of any proceeds hereafter received by the applicant on the disposal of termination inventory, plus the cost or agreed value, as the case may be, of any termination inventory which the applicant hereafter elects to retain, exceeds the amount stated by the applicant in this application as the amount of his charges *(Section II, Line 9)* and the amount of such credits has not been included on Section II, Line b *(Disposal and Other Credits)*, the applicant within 10 days will notify the contracting agency of the amount of credits on account of such inventory disposal or retention.

SPECIMEN

SECTION IV.—CERTIFICATE OF APPLICANT

The undersigned certifies that the amount of his own charges *(exclusive of subcontractors' charges)* due as of the date of this application and allocable to the terminated portion of its contract Number_____, dated_____, with_____, is not less than $_____; *(From Sec. II, Line 9)* that, to the best of applicant's knowledge, the amounts received are as set forth above; and that the applicant has not assigned any moneys payable under this contract, except as set forth above.

NAME OF APPLICANT | BY *(Signature of authorized official)*

TITLE | DATE

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SUPPORTING SCHEDULES

2

(c) Page 3 of Format 804–2.

SECTION V.—RECOMMENDATION OF FIRST REVIEWING CONTRACTOR

The undersigned states that he has examined this application and has considered the applicant's general reputation. He has no reason to doubt the accuracy of the information contained in this application or that the amount certified by the applicant as due will constitute a proper charge to be included in the undersigned's termination claim against _____. He recommends that the requested partial payment be made.

The undersigned agrees that he will promptly pay over to the applicant or credit against amounts owing from the applicant any amount received for the benefit of the applicant under this application, and that he will repay to the Government on demand any amount not so paid or credited.

NAME OF CONTRACTOR	BY *(Signature of authorized official)*	
	TITLE	DATE

SECTION VI.—RECOMMENDATIONS OF OTHER REVIEWING CONTRACTORS

Each of the undersigned states that he has no reason to doubt that the amount of the partial payment requested, and recommended above is due the applicant and will constitute a proper charge in the termination claim of the undersigned.

Each of the undersigned agrees that he will promptly pay over to his immediate subcontractor or credit against amounts owing from such subcontractor any amount received for the benefit of the applicant under this application, and that he will repay to the Government on demand any amount not so paid or credited.

SPECIMEN

	CONTRACTOR	DATE	IDENTIFICATION OF YOUR CONTRACT	SIGNATURE OF OFFICER, PARTNER, OR OWNER
1				
2				
3				
4				
5				
6				
7				

WHERE THE SPACE PROVIDED FOR ANY INFORMATION IS INSUFFICIENT, ATTACH SEPARATE SUPPORTING SCHEDULES

2

§ 1–8.805 Scrap warranty.

A warranty in the general format set forth below shall be executed by a purchaser of material as scrap (on direct purchase from the Government or on subsequent resale) in accordance with the requirements of § 1–8.504.

SCRAP WARRANTY

In consideration of the transfer to the undersigned of the property covered by this Agreement at a value based upon its being used as scrap, the undersigned represents and warrants to the United States of America as follows:

(a) The property covered by this Agreement will be used only as scrap, either in its existing condition or after further preparation, unless and until the undersigned is released from this warranty.

(b) In the event the undersigned is released from this warranty, any payment agreed on as consideration for such release shall be made to the United States, regardless of whether this warranty shall have been executed at the request of the United States.

(c) In the event the undersigned sells the property covered by this Agreement prior to release of this warranty, the undersigned will obtain from the purchaser and tender to the United States a warranty identical to this executed by the purchaser, and upon receipt of such other warranty, this warranty will be released by the United States.

§ 1–8.806 Formats of settlement agreement.

§ 1–8.806–1 Settlement agreement for use in settling fixed-price prime contracts after complete termination.

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this _____ day of _____, 19__, between the UNITED STATES OF AMERICA (hereinafter called "The Government") represented by the Contracting Officer executing this contract, and _____

(a) A corporation organized and existing under the laws of the State of _____;

(b) A partnership consisting of _____;

(c) An individual doing business as _____;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated _____, the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

WHEREAS, as used herein, the following terms shall have the meanings hereinafter set forth:

(a) The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, material, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property as defined below.

(1) "Contractor-acquired property" means property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract or exercises its contractual right to take title.

(2) "Government-furnished property" means property in the possession of or acquired directly by the Government, and subsequently delivered or otherwise made available to the Contractor.

(b) The term "subcontract" means any contract, as defined in § 1–1.208 of the Federal Procurement Regulations (41 CFR 1–1.208), other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

(c) The term "scrap" means property which has no reasonable prospect of being sold except for the recovery value of its basic material content.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ARTICLE 2. (a) The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate

subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (1) that all of his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts, and (2) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

(b) The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (a) all such items are properly allocable to the terminated portion of the contract; (b) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (c) such items do not include any items reasonably usable without loss to the Contractor, on his other work; and (d) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ARTICLE 5. (a) The Contractor has received the sum of $------ on account of work and services performed, or articles delivered, under the completed portion of the contract. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in settlement of the Contract.

(b) In addition, upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of proper invoices or vouchers, the sum of $------ [insert net amount of settlement], arrived at by deducting from the sum of $------ [for claim submitted on inventory basis, insert gross amount of settlement; for claim submitted on total cost basis, insert gross amount of settlement less amount set forth in 5a above], (1) the amount of $------ representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, if any, thereon), and (2) the amount of $------ representing all applicable property disposal credits [and (3) the amount of $------ representing all other amounts due the Government under this contract except as hereinafter provided in Article 6 [1]]. Said sum of $------ [insert net amount of settlement], together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ARTICLE 6. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement is signed (see § 1–8.209–2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.]

(a) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19-- [insert reference to applicable Renegotiation Act].

(b) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, and applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(c) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(d) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in his custody.

(e) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(f) All rights and liabilities of the parties under the contract with respect to any and all Government property furnished to the Contractor for the performance of this contract.

(g) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(h) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of statutes and Executive orders, including without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of statutes or Executive orders, the suggested language should be appropriately modified.]

In Witness Whereof, etc.

[1] To be inserted where appropriate.

§ 1–8.806–2 Settlement agreement for use in settling fixed-price prime contracts after partial termination.

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this ------ day of ----------, 19-- between the UNITED STATES OF AMERICA (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and ----------

(a) A corporation organized and existing under the laws of the State of ----------;

(b) A partnership consisting of ----------;

(c) An individual doing business as ----------;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. ------ under date of ----------, 19-- which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated ----------, the Government advised the Contractor of the partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as the "terminated portion of the contract"; and

WHEREAS, as used herein, the following terms shall have the meanings hereinafter set forth:

(a) The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, material, production or other equipment, or special tooling, which are subject to a separate contract or special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property as defined below.

(1) "Contractor-acquired property" means property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the Contract or exercises its contractual right to take title.

(2) "Government-furnished property" means property in the possession of or acquired directly by the Government, and subsequently delivered or otherwise made available to the Contractor.

(b) The term "subcontract" means any contract, as defined in § 1–1.208 of the Federal Procurement Regulations (41 CFR 1–1.208), other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

(c) The term "scrap" means property which has no reasonable prospect of being sold except for the recovery value of its basic material content.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. The terminated portion of the contract is designated as follows: (specify the terminated portion clearly as to items, including (a) item numbers, (b) descriptions, (c) quantity terminated, (d) unit price of items, (e) total price of terminated items, and (f) any other explanation necessary to avoid uncertainty or misunderstanding.)

ARTICLE 2. The Contractor certifies that all contract termination inventory (includ-

ing scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ARTICLE 3. (a) The Contractor certifies that, prior to the execution of this agreement, each of the contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (1) that all his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts, and (2) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

(b) The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 4. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (a) all such items are properly allocable to the terminated portion of the contract; (b) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (c) such items do not include any items reasonably usable, without loss to the Contractor, on his other work; and (d) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 5. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ARTICLE 6. Upon execution of this agreement, the Government agrees to pay to the Contractor or his assignee, upon presentation of proper invoices or vouchers, the sum of $------ [insert net amount of settlement], arrived at by deducting from the sum of $------ [insert gross amount of settlement], (a) the amount of $------ representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, if any, thereon) applicable to the terminated portion of the contract and (b) the amount of $------ representing all applicable property disposal credits. Said sum of $------ [insert net amount of settlement], together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor with respect to the terminated portion of the contract, except as hereinafter provided in Article 7.

ARTICLE 7. Upon payment of said sum of $------ [insert net amount of settlement], all obligations of the Contractor to perform further work or services or to make further deliveries under the terminated portion of the contract and all obligations of the Government to make further payments or to carry out other undertakings in connection therewith shall cease: *Provided, however,* That nothing herein contained shall impair or affect in any way any covenants, terms, or conditions of the contract relating to the completed or continued portion thereof: *And provided further,* That, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved.

[The following list of reserved or excepted rights and liabilities relating to the terminated portion of the contract is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see § 1–8.209–2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional execeptions or reservations required.]

(a) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19-- [insert reference to applicable Renegotiation Act].

(b) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of statutes and Executive orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of statutes or Executive orders, the suggested language should be appropriately modified.]

(c) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, and applications for patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(d) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(e) All rights and liabilities of the parties with respect to any contract termination inventory stored for the Government pursuant to Article 2 hereof.

In Witness Whereof, etc.

§ 1–8.806–3 Partial settlement agreement, for use in settling fixed-price prime contracts after complete or partial termination where settlement pertains only to settlements with subcontractors.

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this ------ day of ---- ------, 19-- between the UNITED STATES OF AMERICA (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and --------

(a) A corporation organized and existing under the laws of the State of ----------;
(b) A partnership consisting of ---------;
(c) An individual doing business as ----------;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. -------- under date of ----------, 19-- which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the Termination for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated ----------, the Government advised the Contractor of the [complete termination of the contract for the convenience of the Government;] [2] [partial termination of the contract for the convenience of the Government as of the date and to the extent provided in such notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract";] [3] and

WHEREAS, the Contractor, in connection with the performance of the contract, has entered into the following subcontracts [among others]: [3] [Insert here a list of the terminated subcontracts included in this settlement], which subcontracts were terminated by the Contractor in accordance with the termination for convenience clause of the contract and in accordance with the Notice of Termination received by him from the Government; and

WHEREAS, the parties desire to settle that portion of the termination claim of the Contractor which is based upon the termination of the subcontracts listed herein; and

WHEREAS, as used herein, the following terms shall have the meanings hereinafter set forth:

(a) The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, material, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property as defined below.

(1) "Contractor-acquired property" means property procured or otherwise provided by the contractor for the performance of a contract, whether or not the Government has title by the terms of the contract or exercises its contractual right to take title.

(2) "Government-furnished property" means property in the possession of or acquired directly by the Government, and subsequently delivered or otherwise made available to the Contractor.

(b) The term "subcontract" means any contract, as defined in § 1–1.208 of the Federal Procurement Regulations (41 CFR 1–1.208), other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

(c) The term "scrap" means property which has no reasonable prospect of being

---

[2] Insert appropriate phrase.
[3] Insert where appropriate.

sold except for the recovery value of its basic material content.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. (a) The contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (1) that all his subcontract termination inventory (including scrap), has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts, and (2) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

(b) The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to such subcontract termination inventory, to the extent that it is not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 2. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ARTICLE 3. The Contractor certifies that, with respect to all items of subcontract termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (a) all such items are properly allocable to the terminated portion of the contract; (b) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (c) such items do not include any items reasonably usable, without loss to the Contractor, on his other work; and (d) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 4. Upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of proper invoices or vouchers, the sum of $------, which sum, [together with the amount of $------ heretofore paid the Contractor as partial, progress, or advance payments],[3] constitutes payment in full and complete settlement, except as hereinafter provided in Article 5, of the amount due the Contractor with respect to that portion of his termination claim which is based upon termination of the subcontracts listed hereinabove. [The first sum to be inserted above should be the net amount of this partial settlement, arrived at by deducting from the gross amount of settlements with subject subcontractors as approved by the Contracting Officer; the second amount to be inserted above, which is that portion of partial, progress, or advance payments liquidated by this agreement.]

ARTICLE 5. Notwithstanding any other provision of this agreement, the following rights and liabilities of the parties under the contract are hereby reserved:

[Insert here a list of the reserved or excepted rights and liabilities of the Government and the Contractor (see § 1-8.209-2). Reference is made to instructions set forth in Article 6 of the agreement set forth in § 1-8.806-1 and Article 7 of the agreement set forth in § 1-8.806-2 and to the reserved or excepted rights and liabilities set forth in those articles, which may be used as appropriately modified to meet the requirements of any given settlement hereunder.]

In Witness Whereof, etc.

§ 1-8.806-4 Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement includes costs.

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this ------ day of ------, 19-- between the UNITED STATES OF AMERICA (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and --------

(a) A corporation organized and existing under the laws of the State of ----------;

(b) A partnership consisting of ----------;

(c) An individual doing business as ----------;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. ------- under date of ----------, 19-- which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the Termination for Default or Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated ----------, the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

WHEREAS, as used herein, the following terms shall have the meanings hereinafter set forth:

(a) The term "termination inventory" means any items of physical property purchased, supplied, manufactured, furnished, or otherwise acquired for performance of the contract and properly allocable to the terminated portion of the contract. The term does not include any facilities, material, production or other equipment, or special tooling, which are subject to a separate contract or a special contract provision governing the use or disposition thereof. Termination inventory may include contractor-acquired property and Government-furnished property as defined below.

(1) "Contractor-acquired property" means property procured or otherwise provided by the Contractor for the performance of a contract, whether or not the Government has title by the terms of the contract or exercises its contractual right to take title.

(2) "Government-furnished property" means property in the possession of or acquired directly by the Government, and subsequently delivered or otherwise made available to the Contractor.

(b) The term "subcontract" means any contract, as defined in § 1-1.208 of the Federal Procurement Regulations (41 CFR 1-1.208), other than a prime contract, entered into by a prime contractor or a subcontractor, calling for supplies or services required for the performance of any one or more prime contracts.

(c) The term "scrap" means property which has no reasonable prospect of being sold except for the recovery value of its basic material content.

NOW THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE 1. The Contractor certifies that all contract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, have been taken into account in arriving at this agreement.

ARTICLE 2. (a) The Contractor certifies that, prior to the execution of this agreement, each of the Contractor's immediate subcontractors whose claim is included in the claim settled by this agreement has furnished to the Contractor a certificate stating (1) that all of his subcontract termination inventory (including scrap) has been retained or otherwise acquired by him, sold to third parties, returned to suppliers, stored for the Government, delivered to the Government, or otherwise properly accounted for, and all proceeds or retention prices thereof, if any, were taken into account in arriving at the settlement of the subcontract or subcontracts, and (2) that the subcontractor has received from each of the immediate subcontractors whose claim was included in his claim a substantially similar certificate.

(b) The Contractor hereby transfers and conveys to the Government all the right, title, and interest, if any, which the Contractor has received, or is entitled to receive, in and to subcontract termination inventory, if any, not otherwise properly accounted for, and hereby assigns to the Government any and all of his rights relating thereto.

ARTICLE 3. The Contractor certifies that, with respect to all items of termination inventory the costs of which were taken into account in arriving at the amount of this settlement, or in the settlement of any subcontract claim included in this settlement: (a) all such items are properly allocable to the terminated portion of the contract; (b) such items are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; (c) such items do not include any items reasonably usable, without loss to the Contractor, on his other work; and (d) the Contractor has informed the Contracting Officer of any substantial change in the status of such items between the dates of his termination inventory schedules and the date of this agreement.

ARTICLE 4. In all cases where the Contractor has not previously made such payments, the Contractor shall, within ten (10) days after receipt of the payment provided for hereunder, pay to each of his immediate subcontractors (or to their respective assignees) the respective amounts to which they are entitled, after deducting, if the Contractor so elects, any amounts then due and payable to the Contractor by such subcontractors.

ARTICLE 5. (a) The Contractor has received the sum of $------ on account of work and services performed, or articles delivered, under the contract prior to the effective date of termination. The Government as part of this negotiated settlement hereby confirms and acknowledges the right of the Contractor, subject to the provisions of Article 6 hereof, to retain such sum heretofore paid and agrees that such sum constitutes a portion of the total amount to which the Contractor is entitled in complete and final settlement of the contract.

(b) In addition, upon execution of this agreement the Government agrees to pay to the Contractor or his assignee, upon presentation of proper invoices or vouchers, the

[3] Insert where appropriate.

sum of $------ [insert net amount of set-

to which the contractor has

sum of $------ [insert net amount of settlement], arrived at by deducting from the sum of $------ [insert gross amount of settlement less amount set forth in Article 5(a) above], (1) the amount of $------ representing all unliquidated partial or progress payments previously made on account to the Contractor or his assignee and all unliquidated advance payments (with interest, of any, thereon) and (2) the amount of $------ representing all applicable property disposal credits [and (3) the amount of $------ representing all other amounts due the Government under this contract except as hereinafter provided in Article 6].[4] Said sum of $------ [insert net amount of settlement], together with all other sums heretofore paid, constitutes payment in full and complete settlement of the amount due the Contractor by reason of the complete termination of work under the contract and of all other claims and liabilities of the Contractor and the Government under the contract, except as hereinafter provided in Article 6.

ARTICLE 6. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see § 1–8.209–2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following rights which are not applicable and add any additional exceptions or reservations required.]

(a) Claims by the Contractor against the Government for items of cost which are the subject of General Accounting Office exceptions (or other items of cost of the same nature), which are excluded from the settlement without prejudice to the rights of either party, as follows: [Insert the amounts and describe the claims not waived by Contractor.]

(b) Claims by the Contractor against the Government, as to which his right of reimbursement is disputed, which are excluded without prejudice to the rights of either party as follows: [Insert the amounts and describe the claims with respect to which findings have been made by the Contracting Officer disallowing the item and with respect to which the contractor has taken, or intends to take, timely appeal.]

(c) Claims by the Contractor against the Government which are unknown in amount and which involve costs claimed to be reimbursable under the contract, as follows: [Insert the estimated amounts and describe the claims.]

(d) Claims by the Contractor against the Government whose existence is unknown, based upon responsibility of the Contractor to third parties and which involve costs reimbursable under the contract.

(e) Claims by the Government against the Contractor which are based upon refunds, rebates, credits, or other accounts not now known to the Government, together with interest thereon, now due or which may become due the Contractor from third parties to the extent that such amounts arise out of transactions for which reimbursement has been made to the Contractor under the contract. Any such amounts which may hereafter become due to the Contractor from any third party or other source shall be paid to the Government within 30 days after receipt by the Contractor. Interest at 6 percent per annum shall accrue and shall be paid to the Government on any such accounts as remain unpaid after the 30-day period.

(f) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19__. [Insert reference to applicable Renegotiation Act.]

(g) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringements, inventions, and applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(h) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(i) All rights and liabilities of the parties under agreements with respect to the future care and disposition by the Contractor of Government-owned property remaining in his custody.

(j) All rights and liabilities of the parties under the contract with respect to any contract termination inventory stored for the Government pursuant to Article 1 hereof.

(k) All rights and liabilities of the parties under the contract with respect to any and all Government property furnished to or acquired by the Contractor for the performance of this contract.

(l) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(m) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of statutes and Executive orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of statutes or Executive orders, the suggested language should be appropriately modified.]

In Witness Whereof, etc.

§ 1–8.806–5 Settlement agreement for use in settling cost-reimbursement type prime contracts after complete termination where settlement is limited to fee.

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this ------ day of ----------, 19__ between the UNITED STATES OF AMERICA (hereinafter called "the Government") represented by the Contracting Officer executing this contract, and ----------

(a) A corporation organized and existing under the laws of the State of ----------;

(b) A partnership consisting of---------,

(c) An individual doing business as ----------;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. ------ under date of ----------, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the Termination for Default or for Convenience of the Government clause of the contract provides that the performance of work under the contract may at the convenience of the Government be terminated by the Government in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated ----------, the Government advised the Contractor of the complete termination of the contract for the convenience of the Government; and

WHEREAS, this settlement agreement is limited to adjustment of the fee.

NOW THEREFORE, the parties hereto do mutually agree as follows:

ARTICLE I. (a) The Contractor has received the sum of $------ on account of his fee under the contract prior to the effective date of termination.

(b) In addition, upon execution of this agreement, the Government agrees to pay to the Contractor or his assignee, upon presentation of proper invoices or vouchers, the sum of $------ [insert net amount to be paid on account of fee]. Said sum, together with all other sums heretofore paid on account of fee, constitutes payment in full and complete settlement of the amount due the Contractor on account of his fee under the contract.

ARTICLE 2. The Contractor's allowable costs under the contract will be paid in accordance with the applicable provisions of the contract and of Part 1–8 of the Federal Procurement Regulations 41 CFR 1–8). [Insert this Article 2 only if there are costs to be vouchered out (see § 1–8.402(a)) or if there are costs to be covered later by a separate settlement agreement.]

ARTICLE 3. Notwithstanding any other provision of this agreement the following rights and liabilities of the parties under the contract are hereby reserved:

[The following list of reserved or excepted rights and liabilities is intended to cover those which should most frequently be reserved, and which should in any event be scrutinized at the time a settlement agreement is signed (see § 1–8.209–2). The suggested language of the enumerated excepted items on the list may be varied in the discretion of the Contracting Officer to cover more accurately the exceptions needed in a particular case. Where greater accuracy or completeness may be achieved by a reference to the number of the contract clause or provision covering the matter in question, this method of enumerating reserved rights and liabilities may be followed. Omit any of the following which are not applicable and add any additional exceptions or reservations required.]

(a) All rights and liabilities, if any, of the parties under the Renegotiation Act of 19__ [insert reference to applicable Renegotiation Act].

(b) All rights and liabilities of the parties arising under the contract articles, if any, or otherwise which relate to reproduction rights, patent infringement, inventions, and applications for patent and patents, including rights to assignments, invention reports and licenses, covenants of indemnity against patent risks, and bonds for patent indemnity obligations, together with all rights and liabilities under any such bond.

(c) All rights and liabilities of the parties under the contract relating to options (except options to continue or increase the work under the contract), covenants not to compete, and covenants of indemnity.

(d) All rights and liabilities of the parties under agreement with respect to the future care and disposition by the Contractor of

[4] To be inserted where appropriate.

Government-owned property remaining in his custody.

(e) All rights and liabilities of the parties under the contract with respect to any and all Government property furnished to or acquired by the Contractor for the performance of this contract.

(f) All rights and liabilities of the parties arising under the contract, or otherwise, concerning defects in, or guarantees or warranties relating to, any articles or component parts furnished to the Government by the Contractor pursuant to the contract or this agreement.

(g) All rights and liabilities, if any, of the parties under those clauses inserted in the contract because of the requirements of statutes and Executive orders, including, without limitation, any applicable clauses relating to the following topics: labor law, contingent fees, domestic articles, employment of aliens, and "officials not to benefit." [If the contract contains clauses of this character inserted for reasons other than requirements of statutes or Executive orders, the suggested language should be appropriately modified.]

In Witness Whereof, etc.

§ 1–8.806–6 No-cost settlement agreement—partial termination.

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this _____ day of _____, 19__, between the UNITED STATES OF AMERICA (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and _____

(a) A corporation organized and existing under the laws of the State of _____;

(b) A partnership consisting of _____;

(c) An individual doing business as _____;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated _____, 19__, the Government advised the Contractor of the partial termination of the contract for the convenience or at the option of the Government as of the date and to the extent provided in such notice, to which reference is hereby made as to the part terminated, and said part is hereinafter referred to as "the terminated portion of the contract"; and

WHEREAS, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. The terminated portion of the contract is designated as follows: (Specify the terminated portion clearly as to items including (a) item numbers, (b) descriptions, (c) quantity terminated, (d) unit price of items, (e) total price of terminated items, and (f) any other explanation necessary to avoid uncertainty or misunderstanding.)

ARTICLE 2. The Contractor hereby unconditionally waives any claim against the Government arising under the terminated portion of the contract or by reason of its termination including, without limitation, all obligation of the Government to make further payments or to carry out other undertakings in connection with said terminated portion, and the Government acknowledges that the Contractor has no obligation to perform further work or services or to make further deliveries of articles or materials under the terminated portion of the contract: *Provided, however,* That nothing herein contained shall impair or affect in any way any other covenants, terms or conditions of the contract: *And provided further,* That, with respect to the terminated portion of the contract, the following rights and liabilities of the parties are reserved:

[List reserved or excepted rights and liabilities; see § 1–8.209–2 and Article 7 of the agreement set forth in § 1–8.806–2.]

In Witness Whereof, etc.

§ 1–8.806–7 No-cost settlement agreement—complete termination.

THIS SUPPLEMENTAL AGREEMENT OF SETTLEMENT, entered into this _____ day of _____, 19__ between the UNITED STATES OF AMERICA (hereinafter called "the Government"), represented by the Contracting Officer executing this contract, and _____

(a) A corporation organized and existing under the laws of the State of _____;

(b) A partnership consisting of _____;

(c) An individual doing business as _____;

(hereinafter called "the Contractor").

WITNESSETH THAT:

WHEREAS, the Contractor and the Government have entered into Contract No. _____ under date of _____, 19__ which, together with any and all amendments, changes, modifications, and supplements thereto, is hereinafter referred to as "the contract"; and

WHEREAS, the contract provides that the performance of work thereunder may at the convenience or option of the Government be terminated by the Government in whole, or from time to time in part, whenever any such termination is determined to be for the best interest of the Government, and that the Contractor and Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of such termination; and

WHEREAS, by notice of termination dated _____, 19__, the Government advised the Contractor of the termination of the contract for the convenience or at the option of the Government; and

WHEREAS, the Contractor is willing to waive unconditionally any claim against the Government by reason of such termination.

NOW, THEREFORE, the parties hereto agree as follows:

ARTICLE 1. The Contractor hereby unconditionally waives any claim against the Government by reason of the termination of the contract and, except as set forth below, releases it from any and all obligations arising under the contract or by reason of its termination; and the Government agrees that all obligations arising under the contract or by reason of its termination, shall be deemed to be concluded; except as follows:

[List reserved or excepted rights and liabilities; see § 1–8.209–2 and Article 6 of the agreement set forth in § 1–8.806–1.]

In Witness Whereof, etc.

PART 1–9 [RESERVED]

PART 1-10—BONDS AND INSURANCE

Sec.
1-10.000 Scope of part.

Subpart 1-10.1—Bonds

1-10.100 Scope of subpart.
1-10.101 Applicability.
1-10.102 Definitions.
1-10.102-1 Bond.
1-10.102-2 Bid guarantee.
1-10.102-3 Performance bond.
1-10.102-4 Payment bond.
1-10.102-5 Advance payment bond.
1-10.102-6 Patent infringement bond.
1-10.102-7 Construction contract.
1-10.102-8 Annual bid bond.
1-10.102-9 Annual performance bond.
1-10.102-10 Consent of surety.
1-10.102-11 Penal sum or amount.
1-10.103 Bid guarantees.
1-10.103-1 Policy on use.
1-10.103-2 Amount required.
1-10.103-3 Invitation for bids provisions.
1-10.103-4 Failure to submit proper bid guarantee.
1-10.104 Performance bonds.
1-10.104-1 Construction contracts.
1-10.104-2 Other than construction contracts.
1-10.104-3 Annual performance bonds.
1-10.105 Payment bonds.
1-10.105-1 Construction contracts.
1-10.105-2 Other than construction contracts.
1-10.105-3 Furnishing information to subcontractors and suppliers.
1-10.106 Advance payment bonds.
1-10.107 Patent infringement bonds.
1-10.108 Other types of bonds.
1-10.109 Execution and administration of bonds.

Subpart 1-10.2—Sureties on Bonds

1-10.201 General.
1-10.202 Corporate sureties.
1-10.203 Individual sureties.
1-10.204 Options in lieu of sureties.
1-10.204-1 United States bonds or notes.
1-10.204-2 Certified or cashier's checks, bank drafts, money orders, currency, or irrevocable letters of credit.
1-10.205 Consent of surety.
1-10.206 Furnishing information to sureties.

Subpart 1-10.3—Insurance—General

1-10.300 Scope of subpart.
1-10.301 General.
1-10.302 Notice of cancellation or change.
1-10.303 Responsibility for loss of or damage to Government property.
1-10.304 Insurance against loss of or damage to Government property.
1-10.305 Procedures to be followed in the event of loss or damage to Government property.

Subpart 1-10.4—Insurance Under Fixed-Price Contracts

1-10.400 Scope of subpart.
1-10.401 Policy.
1-10.402 Workmen's Compensation insurance overseas.

Subpart 1-10.5—Insurance Under Cost-Reimbursement Type Contracts

1-10.500 Scope of subpart.
1-10.501 Policy.
1-10.502 Types of insurance.
1-10.502-1 Workmen's compensation and employers' liability insurance.
1-10.502-2 General liability insurance.
1-10.502-3 Automobile liability insurance.
1-10.502-4 Aircraft public and passenger liability insurance.
1-10.502-5 Vessel collision liability and protection and indemnity liability insurance.
1-10.503 Self-insurance.
1-10.504 Government property [Reserved.]

AUTHORITY: The provisions of this Part 1-10 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1-10.000 Scope of part.

This part prescribes policies and procedures with respect to the use of bonds and insurance in connection with procurement contracts. Specifically dealt with are such subjects as bid guarantees, bonds, sureties, and insurance.

Subpart 1–10.1—Bonds

§ 1–10.100 Scope of subpart.

This subpart deals, primarily, with the use of bonds. It deals also, however, with the use of bid guarantees which, while most frequently in bond form, may take other forms.

§ 1–10.101 Applicability.

This Subpart 1–10.1 is applicable both to negotiated and formally advertised procurements. In its application to negotiated procurements, the terms "bid" and "invitation for bids" used in this subpart shall be construed to include their counterparts, i.e., "proposal" and "request for proposals", and the substitution of the latter terms whenever appropriate is authorized.

§ 1–10.102 Definitions.

As used in this subpart, the following terms have the meanings set forth in this § 1–10.102.

§ 1–10.102–1 Bond.

"Bond" means a written instrument executed by a bidder or contractor, identified in the instrument as the "principal", together with a third party, identified in the instrument as the "surety", to secure fulfillment by the bidder or contractor of his obligations as set out in the bond and, in the event of his failure so to do, to assure payment of any loss sustained by the party for whose protection the bond was furnished, to the extent provided in the bond.

§ 1–10.102–2 Bid guarantee.

"Bid guarantee" means a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit, or certain bonds or notes of the United States, accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required, if any, and give bond(s) within the time specified after the forms are presented to him.

§ 1–10.102–3 Performance bond.

"Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

§ 1–10.102–4 Payment bond.

"Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the prosecution of the work provided for in the contract.

§ 1–10.102–5 Advance payment bond.

"Advance payment bond" means a bond executed in connection with a contract to secure fulfillment of the contractor's obligations under an advance payments provision.

§ 1–10.102–6 Patent infringement bond.

"Patent infringement bond" means a bond executed in connection with a contract to secure fulfillment of the contractor's obligations under a patent clause.

§ 1–10.102–7 Construction contract.

"Construction contract" means any contract for construction, alteration or repair as provided in § 1–12.402–1.

§ 1–10.102–8 Annual bid bond.

"Annual bid bond" means a single bond furnished by a bidder, in lieu of separate bid bonds, to serve as his bid guarantee in connection with bids submitted during a specific fiscal year of the Government.

§ 1–10.102–9 Annual performance bond.

"Annual performance bond" means a single bond furnished by a contractor, in lieu of separate performance bonds, to secure fulfillment of all of the contractor's obligations under contracts entered into during a specific fiscal year of the Government.

§ 1–10.102–10 Consent of surety.

"Consent of surety" means an acknowledgment by a surety that its bond given in connection with a contract continues to apply to the contract as modified.

§ 1–10.102–11 Penal sum or amount.

"Penal sum" or "penal amount" means the amount specified in a bond (expressed in terms of dollars or, in the case of a bid bond, as a percentage of the bid price) as the maximum payment for which the surety is obligated.

§ 1–10.103 Bid guarantees.

§ 1–10.103–1 Policy on use.

(a) A bid guarantee may be required only when (1) the invitation for bids specifies that a contract must be supported by a performance bond or by performance and payment bonds, and (2) the bid exceeds $2,000 (see § 1–10.103–3 (a)(1)).

(b) Annual bid bonds are not acceptable in connection with bids for construction contracts.

§ 1–10.103–2 Amount required.

(a) Whenever a bid guarantee is required, the contracting officer in accordance with his best judgment shall determine the amount, or percentage which when applied to the bid price will produce an amount, that will provide a bid guarantee which is adequate to protect the Government from loss in the event of termination of the contract for default as provided in § 1–10.103–3(a)(2). The amount of the bid guarantee shall be not less than 20 percent of the bid price but shall not exceed $3,000,000.

(b) The penal sum of a bid bond may be expressed as a specified percentage of the bid price. In this fashion, the bid bond may be written by the surety before the bidder's final determination of his bid price. Where such penal sum is expressed as a percentage, a maximum dollar limitation may be stated.

§ 1–10.103–3 Invitation for bids provisions.

(a) Where a bid guarantee is required, the invitation for bids shall contain:

(1) A statement requiring that a bid guarantee be submitted with any bid in excess of $2,000 and containing such details as are necessary to enable bidders to determine the proper amount of bid guarantee to be submitted; and

(2) The following provision (modified, if appropriate, in accordance with paragraph (b) of this § 1–10.103–13.

BID GUARANTEE

Where a bid guarantee is required by the invitation for bids, failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

A bid guarantee shall be in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Bid guarantees, other than bid bonds, will be returned (a) to unsuccessful bidders as soon as practicable after the opening of bids, and (b) to the successful bidder upon execution of such further contractual documents and bonds as may be required by the bid as accepted.

If the successful bidder, upon acceptance of his bid by the Government within the period specified therein for acceptance (sixty days if no period is specified) fails to execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the bid as accepted within the time specified (ten days if no period is specified) after receipt of the forms by him, his contract may be terminated for default. In such event he shall be liable for any cost of procuring the work which exceeds the amount of his bid, and the bid guarantee shall be available toward offsetting such difference.

(b) The provision set forth in paragraph (a)(2) of this § 1–10.103–3 is the same as paragraph 4 of Standard Form 22, Instructions to Bidders (Construction Contract), and the requirement of said paragraph (a)(2) is met where that form is furnished to bidders. Where Standard Form 22 is not furnished, the provision must be otherwise incorporated in the invitation for bids except that it may be modified to include the statement required by paragraph (a)(1) of this § 1–10.103–3 and if so modified, the initial phrase of the first paragraph of the provision may be omitted. With respect to contracts for supplies or services, the phrase "any cost of procuring the work" in the third paragraph also may be modified to refer to the cost of "supplies," "services," etc.

§ 1–10.103–4 Failure to submit proper bid guarantee.

Where an invitation for bids requires that a bid be supported by a bid guarantee and noncompliance occurs, the bid shall be rejected, except in the following situations when the noncompliance shall be waived unless there are compelling reasons contrary:

(a) Where only a single bid is received. In such cases, however, the Government may or may not require the furnishing of the bid guarantee before award.

(b) Where the amount of the bid guarantee submitted, though less than the amount required by the invitation for bids, is equal to or greater than the difference between the price stated in the bid and the price stated in the next higher acceptable bid.

(c) Where the bid guarantee is received late and the late receipt may be waived under the rules established in

§ 1-2.303 for consideration of late bids.

(d) Where a bid guarantee ceases to meet the requirements of paragraph (b) of this § 1-10.103-4 as a result of the correction of a mistake in bid under § 1-2.406.

§ 1-10.104 Performance bonds.

§ 1-10.104-1 Construction contracts.

(a) Pursuant to the Miller Act, as amended (40 U.S.C. 270a-270e), a performance bond shall be required in connection with any construction contract exceeding $2,000 in amount, except that this requirement may be waived (1) by the contracting officer for so much of the work as is to be performed in a foreign country, if he finds that it is impracticable for the contractor to furnish such bond, and (2) as may be otherwise authorized by law.

(b) Generally, the penal amount of the performance bonds shall be equal to 100 percent of the contract price at the time of award. However, if the contracting officer finds that such a requirement would be disadvantageous to the Government, he may prescribe an amount which is less than 100 percent of the contract price (e.g., in a very large contract, available surety credit might be insufficient).

(c) Whenever the successful bidder is to furnish a performance bond, the invitation for bids shall so state and shall specify the penal amount required (in a fixed sum or in terms of a percent of the contract price).

(d) When a performance bond is not furnished within the period specified by the terms of the contract, the contract will be subject to termination for default when in the public interest (see §§ 1-10.103-3(a)(2) and 1-8.603-3(c)).

(e) Whenever a contract is modified in a manner not provided for in any provision thereof, consent of surety shall be obtained (see § 1-10.205).

(f) In any case where a contract is modified, whether or not pursuant to a contractual provision, so as to increase the contract amount to such an extent that the penal sum of the existing bond becomes inadequate to protect the Government's interests, in the opinion of the contracting officer, additional performance bond protection shall be secured, either by increasing the penal sum of the existing bond or by obtaining an additional bond from a new surety.

§ 1-10.104-2 Other than construction contracts.

(a) Except as provided in paragraphs (b) and (d) of this § 1-10.104-2, performance bonds shall not be required in connection with other than construction contracts.

(b) Performance bonds may be required where essential to the best interests of the Government. Determinations to require performance bonds shall be made by the contracting officer on individual procurements. Examples of situations which may warrant requiring a performance bond are:

(1) Where the terms of a proposed contract provide for the contractor to have the use of Government property or funds for the performance of the contract or as partial compensation (as in retention of salvaged material).

(2) Where a Government contractor sells his assets to, or merges his business with, another firm and the Government determines to recognize the latter firm as the successor in interest to the contract, and desires assurance as to its financial capacity.

(3) Where substantial progress payments are made before delivery of end items commences.

(c) Where the contracting officer determines to require a performance bond, he shall determine the amount that will adequately protect the Government.

(d) Performance bonds shall not be required unless the invitation for bids requires such a bond, or the requirement of such a bond is in the interest of the Government (as in a contract modification).

(e) When a performance bond is not furnished within the period specified by the terms of the contract, the contract will be subject to termination for default when in the public interest (see §§ 1-10.103-3(a)(2) and 1-8.602-3(c)).

(f) Additional performance bond protection shall be required under the circumstances and in the manner set forth in § 1-10.104-1(f).

§ 1-10.104-3 Annual performance bonds.

Annual performance bonds may be used only in connection with contracts other than construction contracts. When such a bond is used and has been completely obligated in an amount equal to the penal sum thereof, an addtional bond shall be obtained to cover additional contracts.

§ 1-10.105 Payment bonds.

§ 1-10.105-1 Construction contracts.

(a) Pursuant to the Miller Act, as amended (40 U.S.C. 270a-270e), a payment bond shall be required in connection with any construction contract exceeding $2,000 in amount, except that this requirement may be waived (1) by the contracting officer for so much of the work as is to be performed in a foreign country, if he finds that it is impracticable for the contractor to furnish such bond, and (2) as may be otherwise authorized by law.

(b) The penal amount of the payment bond shall be as follows:

(1) When the contract price is not more than $1,000,000, the penal amount shall be 50 percent of the contract price;

(2) When the contract price is more than $1,000,000 but not more than $5,000,000, the penal amount shall be 40 percent of the contract price; and

(3) When the contract price is more than $5,000,000, the penal amount shall be $2,500,000.

(c) Whenever the successful bidder is to furnish a payment bond, the invitation for bids shall so state and shall specify the penal amount required (in a fixed sum or in terms of a percent of the contract price).

(d) When a payment bond is not furnished within the period specified by the terms of the contract, the contract will be subject to termination for default when in the public interest (see §§ 1-10.103-3(a)(2) and 1-8.603-3).

(e) Whenever a contract is modified in a manner not provided for in any provision thereof, consent of surety shall be obtained (see § 1-10.205).

(f) In any case where a contract is modified, whether or not pursuant to a contractual provision, so as to increase the contract amount to such an extent that the penal sum of the existing bond becomes inadequate to protect the interests of persons furnishing labor and material, in the opinion of the contracting officer, additional payment bond protection shall be secured, either by increasing the penal sum of the existing bond or by obtaining an additional bond from a new surety.

§ 1-10.105-2 Other than construction contracts.

(a) Payment bonds generally shall not be required in connection with other than construction contracts and may be required only where the head of the procuring activity determines that such requirement is in the best interest of the Government. If a performance bond is required in connection with a contract, a payment bond can generally be obtained without the payment of an additional premium.

(b) Subject to paragraph (a) of this § 1-10.105-2, a payment bond shall not be required unless the invitation for bids requires such a bond.

(c) Whenever a payment bond is required, the penal sum thereof shall be in an amount deemed adequate by the contracting officer.

§ 1-10.105-3 Furnishing information to subcontractors and suppliers.

Where a payment bond has been provided, the contracting officer may furnish the name and address of the surety or sureties thereon to persons who have furnished, or have been requested to furnish, labor and/or material for use in the prosecution of the work required by the contract in question. In addition, the contracting officer may furnish to persons who satisfy him that they have provided labor and/or material, and have not received payment, additional general information on such matters as the progress of the work, payments, and the estimated percentage of completion.

§ 1-10.106 Advance payment bonds.

An advance payment bond may be required only in connection with a contract containing an advance payments provision, and then only if a performance bond has not been furnished. Whenever an advance payment bond is required, the contracting officer shall determine the amount necessary adequately to protect the Government.

§ 1-10.107 Patent infringement bonds.

Patent infringement bonds may be required only in connection with contracts containing provision for patent indemnity, and then only if a performance bond has not been furnished and if the financial responsibility of the

contractor is unknown or doubtful. Whenever a patent infringement bond is required, the contracting officer shall determine the amount necessary adequately to protect the Government.

§ 1-10.108 Other types of bonds.

Other types of bonds may be used only when, in the opinion of the head of the procuring activity concerned, such bonds are necessary or desirable in connection with the procurement of particular supplies or services (including construction).

§ 1-10.109 Execution and administration of bonds.

The forms and provisions of bonds, and their preparation, execution and administration, shall be in accordance with the provisions of the Federal Procurement Regulations and with agency procedures (see §§ 1-16.801 and 1-16.901 for bond forms).

Subpart 1-10.2—Sureties on Bonds

§ 1-10.201 General.

Every bond furnished in connection with the procurement of supplies or services (including construction) shall be supported by corporate or individual sureties or any of the types of security authorized to be deposited in lieu of surety by § 1-10.204. Invitations for bids or requests for proposals may not preclude bidders from offering any of the types of surety or security authorized to be furnished by this Subpart 1-10.2, unless otherwise authorized by law or regulation.

§ 1-10.202 Corporate sureties.

(a) In connection with contracts for supplies or services (including construction) to be delivered or performed in the United States, Puerto Rico, and the Virgin Islands, any corporate surety offered for a bond furnished the Government must appear on the list contained in Treasury Department Circular 570 and the amount of the bond must not be in excess of the underwriting limits stated in that list.

(b) In connection with contracts to be performed in the Canal Zone, corporate Panamanian surety companies which are acceptable on bonds required by the Panama Canal Company may be accepted in addition to the corporate sureties appearing on the Treasury List. The acceptability of Panamanian sureties shall be subject to the conditions and restrictions (including any requirement for security deposits) imposed by the Panama Canal Company.

(c) For contracts to be performed outside the United States, Puerto Rico, the Virgin Islands, and the Canal Zone, sureties not appearing on Treasury Department Circular 570 may be accepted if determined by the contracting officer to be in the best interest of the Government.

(d) Treasury Department Circular 570 may be obtained from the U.S. Treasury Department, Bureau of Accounts, Division of Deposits and Investments, Surety Bonds Branch, Washington, D.C. 20226.

§ 1-10.203 Individual sureties.

(a) It is the responsibility of the contracting officer to determine the acceptability of individuals proposed as sureties on bonds. At least two individual sureties must execute the bond and the net worth of each individual must be not less than the penal amount of the bond. The number and amounts of other bonds upon which a proposed individual surety is bound, and the status of the contracts in connection with which such bonds were furnished, must be considered in determining the acceptability of the individual surety. (See also the instructions on the reverse of Standard Form 28, Affidavit of Individual Surety, FPR 1-16.901-28.)

(b) Each individual surety must execute an Affidavit of Individual Surety, Standard Form 28. The information thus provided is helpful in determining the net worth of proposed individual sureties.

(c) In order to ascertain the continuing acceptability of individual sureties, the official executing the Certificate of Sufficiency on the reverse of Standard Form 28 may be required to execute further certificates, as contemplated by Instruction 4 on that form, with such frequency as the agency may deem necessary and appropriate.

§ 1-10.204 Options in lieu of sureties.

Any one or more of the types of security listed in this § 1-10.204 may be deposited by the contractor in lieu of furnishing corporate or individual sureties on bonds. Where any such type of security is deposited, a statement shall be incorporated in the bond form pledging such security, and the bond form shall be executed by the contractor as principal. Agencies shall establish such safeguards as may be necessary to protect against loss of the security and shall return such security or its equivalent when, by its terms, the obligation of the bond has ceased.

§ 1-10.204-1 United States bonds or notes.

In accordance with the provisions of the Act of February 24, 1919, as amended (6 U.S.C. 15) and Treasury Department Circular No. 154 dated February 6, 1935 (31 CFR Part 225), any person required to furnish a bond to the Government has the option, in lieu of furnishing a surety or sureties thereon, of depositing certain United States bonds or notes in an amount equal at their par value to the penal sum of the bond, together with a duly executed power of attorney and

agreement authorizing the collection or sale of such United States bonds or notes in the event of default of the principal on the bond. The contracting officer may turn these securities over to the finance or other officer as provided in agency procedures, or deposit them with the Treasurer of the United States, a Federal Reserve Bank, branch Federal Reserve Bank having the requisite facilities, or other depository duly designated for that purpose by the Secretary of the Treasury, under procedures prescribed by the agency concerned and Treasury Department Circular No. 154. However, the contracting officer shall deposit with the Treasurer of the United States all such bonds and notes received by him in the District of Columbia.

§ 1–10.204–2 Certified or cashier's checks, bank drafts, money orders, currency, or irrevocable letters of credit.

Any person required to furnish a bond has the option, in lieu of furnishing surety or sureties thereon, of depositing a certified or caeshier's check, a bank draft, a Post Office money order, currency, or an irrevocable letter of credit, in an amount equal to the penal sum of the bond. Certified or cashier's checks, bank drafts, or Post Office money orders shall be drawn to the order of the appropriate Federal agency.

§ 1–10.205 Consent of surety.

In connection with any amendment, modification, or supplemental agreement with respect to which the waiver of notice to the surety contained in the bond form is inapplicable and which would otherwise effect the release of a surety, or in any other situation as prescribed by each agency, the contracting officer shall obtain the written consent thereto of the surety or sureties on the existing bond or bonds (notwithstanding the fact that there may be an additional bond supported by a new surety); provided, that no such consent need be obtained if there is an increased or additional bond supported by the same surety or sureties.

§ 1–10.206 Furnishing information to sureties.

The surety on any bond executed in connection with a Government contract, upon its written request, shall be furnished with information as to the progress of the work, payments, and the estimated percentage of completion.

Subpart 1–10.3—Insurance—General

§ 1–10.300 Scope of subpart.

This subpart sets forth principles and policies applicable to insurance under contracts for supplies and services (including construction).

§ 1–10.301 General.

Ordinarily, it is the policy of the Government not to insure its own risks. In the absence of specific statutory authority for the payment of insurance premiums, appropriated moneys of the United States generally are not regarded as available for that purpose. There are, however, exceptions to these two statements. Insurance will be required where it is mandatory by law, and may be required in the absence of any statutory prohibition when in the best interest of the Government. Examples of situations which may warrant obtaining insurance are (a) where it is considered desirable to utilize the facilities and services of the insurance industry (e.g., safety protection and claim services), (b) where, in special instances, it is deemed necessary or desirable in connection with the performance of a contract (e.g., transportation of particularly valuable items), or (c) where commingling of property or the conditions of the contract make the carrying of insurance reasonably necessary for the protection of the several interests concerned.

§ 1–10.302 Notice of cancellation or change.

Where insurance is required by contract provision or in writing by the approving authority, the policies evidencing such insurance shall contain an endorsement to the effect that cancellation or material change in the policies, adversely affecting the interest of the Government in such insurance, shall not be effective unless the written notice as required by the approving authority is given.

§ 1–10.303 Responsibility for loss of or damage to Government property.

Where Government property may be in the possession of or under the control of the contractor, or in the custody of a transportation company, the contract shall set forth the responsibility of the contractor for loss of or damage to such Government property.

§ 1–10.304 Insurance against loss of or damage to Government property.

In instances where insurance is required or approved to cover loss of or damage to Government property, such insurance may be provided either by specific insurance policies, or by inclusion of such risks in the contractor's existing insurance policies. When appropriate the insurance policies shall make formal disclosure of the Government's interest in the property.

§ 1–10.305 Procedures to be followed in the event of loss or damage to Government property.

Upon the happening of loss of or damage to any Government property, concerning which the contractor is relieved of responsibility by contract provision, the procedure to be followed shall be as prescribed by the agency.

Subpart 1–10.4—Insurance Under Fixed-Price Contracts

§ 1–10.400 Scope of subpart.

This subpart sets forth general policies with respect to insurance under fixed-price contracts for supplies and services (including construction).

§ 1–10.401 Policy.

Ordinarily Government agencies are not concerned with the insurance programs of fixed-price contractors. However, agencies may be concerned with such insurance programs when special circumstances exist. Examples of special circumstances include the following:

(a) The contractor is engaged principally in Government work.

(b) The contractor has a segregated operation which is engaged principally in Government work.

(c) Government-furnished property is involved.

(d) The work required by the contract is performed within a Government establishment.

(e) The Government may desire to assume risks for which the contractor ordinarily obtains commercial insurance.

§ 1–10.402 Workmen's compensation insurance overseas.

(a) The Defense Base Act, as amended (42 U.S.C. 1651 et seq.), extends the application of the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 901 et seq.) to various classes of employees engaged in work outside the United States, including any employee engaged (1) in the performance of a public work contract or (2) in the performance of any contract approved or financed pursuant to the Foreign Assistance Act of 1961 (P.L. 87–195) other than (i) contracts approved or financed by the Development Loan Fund except where the Secretary of Labor, acting upon the recommendation of any department or agency of the United States, determines that such contracts should be covered, or (ii) contracts exclusively for the furnishing of materials or supplies. As used in this paragraph, a "public work" contract includes any contract for a fixed improvement or any project, whether or not fixed, involving construction, alteration, removal, or repair for the public use of the United States or its allies, including projects or operations under service contracts and projects in connection with the national defense or with war activities, dredging, harbor improvements, dams, roadways, and housing, as well as preparatory and ancillary work in connection therewith at the site or on the project. The following clause shall be included in all contracts subject to the Defense Base Act unless applicability of that Act has been waived by the Secretary of Labor as provided in paragraph (b) of this § 1–10.402:

WORKMEN'S COMPENSATION INSURANCE (DEFENSE BASE ACT)

The Contractor before commencing performance under this contract shall provide and thereafter maintain such Workmen's Compensation Insurance or security as is required by the Defense Base Act, as amended (42 U.S.C. 1651 et seq.). The Contractor further agrees to insert in all subcontracts hereunder to which the Defense Base Act is applicable, a clause similar to this clause, including this sentence, imposing on all such subcontractors a like requirement to comply with the Defense Base Act.

(b) Upon the recommendation of the head of the agency concerned, the Secretary of Labor may waive the applicability of the Defense Base Act with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees.

Subpart 1–10.5 Insurance Under Cost-Reimbursement Type Contracts

§ 1–10.500 Scope of subpart.

This subpart sets forth general policies with respect to insurance under cost-reimbursement type contracts for supplies and services (including construction).

§ 1–10.501 Policy.

The kinds of insurance referred to in this § 1–10.501, with limits of liability as prescribed by the agency, ordinarily shall be required under cost-reimbursement type prime contracts and cost-reimbursement type subcontracts under cost-reimbursement type prime contracts. However, a program of self-insurance approved by the agency concerned, as provided in § 1–10.503, may be substituted for any of the kinds of required insurance.

§ 1–10.502 Types of insurance.

§ 1–10.502–1 Workmen's compensation and employers' liability insurance.

Compliance with applicable workmen's compensation and occupational disease statutes will be required, and employers' liability coverage will be obtained where available. In jurisdictions where all occupational diseases are not compensable under applicable law, insurance for occupational diseases will be required under the employers' liability section of the insurance policy; however, such additional insurance will not be required where contract operations are commingled with the contractor's commercial operations so that it would be impracticable to require such coverage. The clause set forth in § 1–10.402 shall be included in all contracts subject to the Defense Base Act unless applicability of that Act has been waived by the Secretary of Labor as provided in § 1–10.402 (b).

§ 1–10.502–2 General liability insurance.

(a) Bodily injury liability insurance will be required on the comprehensive form of policy.

(b) Property damage liability insurance will be required only in special circumstances as determined by the agency concerned. Property damage liability insurance may be approved when the nature of the contract operations warrant its purchase or where such operations are not separable from the contractor's commercial operations.

§ 1–10.502–3 Automobile liability insurance.

Automobile liability insurance will be required on the comprehensive form of policy and will provide for bodily injury and property damage liability covering the operation of all automobiles used in connection with the performance of the contract.

§ 1–10.502–4 Aircraft public and passenger liability insurance.

Where aircraft are used in connection with the performance of the contract, aircraft public and passenger liability insurance ordinarily will be considered required coverage.

§ 1–10.502–5 Vessel collision liability and protection and indemnity liability insurance.

Where vessels are used in connection with the performance of the contract, vessel collision liability and protection and indemnity liability insurance will be required whenever deemed necessary by the agency concerned.

§ 1–10.503 Self-insurance.

Qualified programs of self-insurance covering any kind of risk may be approved where an examination of the program indicates that its application to the cost-reimbursement type contract is in the best interest of the Government. However, in any jurisdiction where workmen's compensation does not completely cover employers' liability to employees, a program of self-insurance for workmen's compensation may be approved only if—

(a) The contractor also maintains an approved program of self-insurance for any employers' liability which is not so covered; or

(b) The contractor shows that the combined cost to the Government of self-insurance for workmen's compensation and commercial insurance for employers' liability will not exceed the costs of covering both kinds of risks by commercial insurance.

§ 1–10.504 Government property [Reserved].

Pages 10253–10385

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(Continued)

PART 1-11—FEDERAL, STATE, AND LOCAL TAXES

Sec.
1-11.000 Scope of part.
1-11.100 Scope of subpart.
1-11.101 Retailers excise taxes.
1-11.101-1 General.
1-11.101-2 Jewelry and related items.
1-11.101-3 Furs.
1-11.101-4 Toilet preparations.
1-11.101-5 Luggage and handbags.
1-11.101-6 Special fuels.
1-11.102 Manufacturers excise taxes.
1-11.102-1 General.
1-11.102-2 Motor vehicles.
1-11.102-3 Tires and tubes.
1-11 102-4 Gasoline.
1-11.102-5 Lubricating oils.
1-11.102-6 Household type equipment.
1-11.102-7 Radio and television receiving sets, phonographs, and records.
1-11.102-8 Musical instruments.
1-11.102-9 Sporting goods.
1-11.102-10 Photographic equipment.
1-11.102-11 Firearms, shells, and cartridges.
1-11.102-12 Business machines.
1-11.102-13 Pens, mechanical pencils, and lighters.
1-11.102-14 Matches.
1-11.103 Excise taxes on facilities and services.

Subpart 1-11.2—Exemptions From Federal Excise Taxes

1-11.200 Scope of subpart.
1-11.201 Retailers excise taxes.
1-11.202 Manufacturers excise taxes.
Sec.
1-11.203 Supplies and services for the exclusive use of the United States.

Subpart 1-11.3—State and Local Taxes

1-11.301 General.
1-11.302 Applicability.

Subpart 1-11.4—Contract Clauses

1-11.401 Fixed-price type contracts.
1-11.401-1 Advertised and certain negotiated contracts.
1-11.401-2 Certain negotiated contracts.
1-11.401-3 Supplementary clauses.
1-11.401-4 Matters requiring special consideration.
1-11.402 Cost-reimbursement type contracts.

Subpart 1-11.5—Tax Exemption Forms

1-11.500 Scope of subpart.
1-11.501 Federal excise tax exemption forms.
1-11.501-1 Certificate of export to a possession or Puerto Rico.
1-11.501-2 Exemption certificate for supplies for vessels of war.
1-11.501-3 Exemption certificate for oil used for nonlubricating purposes.
1-11.501-4 Cutting oil certificate.
1-11.502 State and local tax exemption forms.
1-11.502-1 Types of evidence of exemption.
1-11.502-2 When evidence of exemption is to be furnished.

AUTHORITY: The provisions of this Part 1-11 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1-11.000 Scope of part.

(a) This part deals with Federal taxes imposed by the Internal Revenue Code upon certain supplies and services procured by executive agencies; exemptions from such Federal taxes; policy for obtaining exemption from State and local taxes; and contract clauses required or authorized for insertion in contracts.

(b) The problems presented in connection with the administration of the tax aspects of a contract or transaction are widely varied. The right to immunity, exemption, refund, credit, or drawback depends upon the nature of the tax, the particular tax law, the party sought to be taxed, the items being procured, and the provisions of the contract. These problems are essentially legal; therefore, when questions arise, contracting officers should request the assistance of legal counsel.

Subpart 1–11.1—Federal Excise Taxes

§ 1–11.100 Scope of subpart.

This subpart deals with Federal excise taxes involved in the procurement of certain supplies and services. It is for the general information of Government personnel and does not purport to present the full scope of the applicable provisions of law and implementing regulations as they may be amended from time to time.

§ 1–11.101 Retailers excise taxes.

§ 1–11.101–1 General.

Chapter 31 of the Internal Revenue Code imposes retailers excise taxes upon various types of articles sold at retail. The tax is not imposed on sales for resale. The sale of taxable articles to the Government for use or consumption is a taxable retail sale. A lease of supplies is treated as a sale for the purpose of these taxes. In general, the tax attaches when title passes from the seller. The amount of tax is based on the sale price or the amount of rental payment. The sale price or rental payment for the purpose of computing the tax excludes:

(a) Whether or not separately stated, the retailers excise tax;

(b) If separately stated, any retail sales tax imposed by any State, or political subdivision thereof, or the District of Columbia, whether liability for such tax is imposed on the vendor or vendee; and

(c) All other service charges such as for transportation, delivery, insurance, and installation; but includes any charges for packaging or packaging materials.

If, after the tax has been paid, the sale price is adjusted for any reason, such as by discount, rebate, allowance, or return of containers, the amount of the tax applicable to such sale price also shall be adjusted by credit or refund. The retailer, in turn, is entitled to a refund or credit from the Internal Revenue Service for such tax adjustment.

§ 1–11.101–2 Jewelry and related items.

(a) A tax of 10 percent of the sale price is imposed upon the following articles sold at retail:

(1) All articles commonly or commercially known as jewelry, whether real or imitation;

(2) Certain specifically listed stones, whether real or synthetic;

(3) Articles made of, ornamented, mounted, or fitted with precious metals or imitations thereof;

(4) Watches, clocks, cases, and movements therefor;

(5) Gold, gold-plated, silver, or sterling flatware or hollowware and silver-plated hollowware (which excludes silver-plated flatware);

(6) Opera glasses, lorngettes and;

(7) Marine glasses, field glasses, and binoculars except those which, because of their size or weight, are ordinarily mounted on tripods or other bases.

(b) This tax does not apply to:

(1) Articles used for religious purposes;

(2) Surgical and dental instruments;

(3) Frames or mountings for eyeglasses;

(4) Fountain pens, mechanical pencils, or smokers' pipes if the only parts of such articles which consist of precious metals are essential parts not used for ornamentation;

(5) Watches designed especially for the blind;

(6) Watches, clocks, cases, and movements previously subjected to manufacturers tax or constituting a part of a nontaxable control or regulatory device; or

(7) Buttons, insignia, and any other devices prescribed for use with the uniforms of the Armed Forces.

(c) Where the manufacturers excise tax has been imposed on a pen, mechanical pencil, or cigarette lighter, which is further processed so as to make it subject to the retailers excise tax on jewelry, the retailer, in computing the retailers excise tax due on the sale, is entitled to a credit or refund in the amount of the manufacturers excise tax paid on the article.

§ 1–11.101–3 Furs.

(a) A tax of 10 percent of the sales price is imposed upon the following articles sold at retail: Articles made of fur on the hide or pelt, and articles of which such fur is the component of chief value, i.e., its value is more than three times that of the next most valuable component material. The tax is not imposed upon the sale of raw fur.

(b) If the fur on the hide or pelt is supplied to a dresser or dyer of fur skins or a manufacturer or repairer of fur articles who produces a taxable article for the use of the supplier of the fur, the transaction is deemed to be a sale at retail and is subject to the tax. The tax applicable to such a transaction is computed upon the fair retail market value of the finished article. Normally, the fair retail market value may be considered as the sales price at which the same or a similar finished article is sold by retailers generally in the ordinary course of retail trade.

§ 1–11.101–4 Toilet preparations.

A tax of 10 percent of the sales price is imposed upon toilet preparations sold at retail and any other similar substance, article, or preparation by whatsoever name known which is used or applied, or intended to be used or applied for toilet purposes, but not including any article intended to be used or applied only in the care of babies, or to sales for use in barber shops and beauty parlors.

§ 1–11.101–5 Luggage and handbags.

A tax of 10 percent of the sales price is imposed upon certain specifically listed articles (including fittings, or accessories sold therewith) sold at retail, such as: Luggage, handbags, cases, kits, and similar items for use in carrying toilet articles or wearing apparel.

§ 1–11.101–6 Special fuels.

(a) *Diesel fuel.* A tax at the indicated rates is imposed upon any liquid, other than that taxable as gasoline under section 4081 of the Internal Revenue Code (see § 1–11.102–4), which is (i) sold by any person to an owner, lessee, or other operator of a diesel-powered highway vehicle, for use as a fuel in such vehicle, or (ii) used by any person as a fuel in a diesel-powered highway vehicle unless there was a taxable sale of such liquid pursuant to (i) above, as follows:

(1) At 4 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle—

(i) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway; or

(2) At 2 cents per gallon, if sold for use or if used as fuel in a diesel-powered highway vehicle—

(i) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway; and

(3) At an additional 2 cents per gallon, if fuel on which a tax of 2 cents was paid pursuant to subparagraph (2) of this § 1–11.101–6(a), is used as fuel in a diesel-powered highway vehicle—

(i) Which, at the time of such use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway.

No tax is imposed on diesel fuel sold for use or used as fuel in a nonhighway vehicle, such as certain military vehicles, construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms.

(b) *Special motor fuels.* A tax at the rates indicated in subparagraphs (1) through (3) of this § 1–11.101–6(b) is imposed upon benzol, benzene, naphtha, liquefied petroleum gas, or any other liquid (other than kerosene, gas oil, fuel oil, or a product taxable as diesel fuel under paragraph (a) of this § 1–11.101–6, or as gasoline under section 4081 of the Internal Revenue Code (see § 1–11.102–4)), which is (i) sold by any person to an owner, lessee, or other operator of a motor vehicle, motorboat, or airplane for use as a fuel for the propulsion thereof, or (ii) used by any person as a fuel for the propulsion of a motor vehicle, motorboat, or airplane, unless there was a taxable sale of such liquid pursuant to (i) above, as follows:

(1) At 4 cents per gallon, if such liquid is sold for use or is used as a fuel for a highway vehicle—

(i) Which, at the time of such sale or use, is registered, or is required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is used on the highway, or

(2) At 2 cents per gallon, if such liquid is sold for use or is used as a fuel for the propulsion of a motorboat or airplane, or a motor vehicle—

(i) Which, at the time of such sale or use, is not registered, and is not required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States, is not used on the highway; and

(3) At an additional 2 cents per gallon, if a liquid on which a tax of 2 cents was paid pursuant to subparagraph (2) of this § 1-11.101-6(b), is used as fuel in a highway vehicle—

(i) Which, at the time of such use, is registered, or required to be registered, for highway use under the laws of any State or foreign country; or

(ii) Which, if owned by the United States is used on the highway.

(c) *Procedures.* (1) The sale of diesel fuel to an owner, lessee, or other operator of a diesel-powered highway vehicle, or of special motor fuel to an owner, lessee, or other operator of a motor vehicle, motorboat, or airplane is considered as a taxable sale by the Internal Revenue Service only (i) if the liquid is delivered by the seller into the fuel supply tank of the vehicle, motorboat, or airplane, or (ii) where not so delivered, the purchaser indicates in writing to the seller prior to or at the time of the sale that the entire quantity of the liquid covered by the sale is for use by him for a taxable purpose as a fuel in such a vehicle, motorboat, or airplane. If such a written statement is not furnished by the purchaser, he is liable for the tax at the applicable rate on that quantity of the liquid which is used by him as fuel in such a vehicle, motorboat, or airplane, or which is sold by him in a taxable transaction.

(2) If it is known in advance of procurement that the entire quantity of any bulk purchase of diesel or special motor fuel is to be used for taxable purposes (as indicated elsewhere in this § 1-11.101-6), bids may be solicited on a tax inclusive basis and the written statement referred to in this § 1-11.101-6(c)(1) should be furnished to the contractor.

(3) All other bulk purchases of diesel and special motor fuels will be on a tax exclusive basis and the agencies will be responsible for making payment of the tax at the applicable rate, directly to Internal Revenue Service. Such payment shall be made quarterly on TD Form 720 "Quarterly Federal Excise Tax Return." A Certificate of Export is not required to support a tax-free sale of diesel fuel exported to a foreign country or shipped to a possession of the United States or to Puerto Rico.

§ 1-11.102 Manufacturers excise taxes.

§ 1-11.102-1 General.

Chapter 32 of the Internal Revenue Code imposes manufacturers excise taxes upon various types of supplies sold by a manufacturer, producer, or importer. In general, the tax attaches when title passes from the manufacturer. The amount of the tax is based on the amount of the sale price. A lease of supplies is treated as a sale for the purpose of these taxes, in which event the tax is measured by the rental payments until such payments equal the price or fair value of the article (see § 1-11.102-12 with respect to lease of business machines by the Government). The sale price or rental payment excludes the tax itself and all service charges connected with the sale, such as transportation, delivery, insurance, or installation charges. However, charges for packaging materials are included. If, after the tax has been paid, the sale price is adjusted for any reason, such as by discount, rebate, allowance, or return of containers, the amount of the tax applicable to such sale price also should be adjusted. The manufacturer, in turn, is entitled to a refund or credit from the Internal Revenue Service for such tax adjustment. Articles subject to the retailers excise tax on jewelry (see § 1-11.101-2) are not subject to manufacturers excise taxes, except any clock or watch, or any case or movement for a clock or watch, sold as a part or accessory, or sold on or in connection with or with the sale of any article. Supplies of native Indian handicraft manufactured or produced by Indians or Indian reservations, or in Indian schools, or by Indians under the jurisdiction of the U.S. Government in Alaska are not subject to manufacturers excise taxes.

§ 1-11.102-2 Motor vehicles.

(a) A tax at the rates indicated below is imposed upon the following articles (including parts and accessories sold therewith) sold by a manufacturer, producer, or importer:

(1) Chassis and bodies of truck, buses, truck and bus trailers, and semitrailers, and tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer—10 percent; except that this tax does not apply to equipment designed for off-the-road use, such as certain military vehicles (including oxygen or bomb dollies), construction equipment, and equipment designed for use at mines, factories, railroad stations, and farms;

(2) Chassis and bodies of automobiles, and of trailers and semitrailers (other than house trailers) suitable for use with passenger automobiles—10 percent; and

(3) Parts or accessories—when sold separately from an automobile, truck, or other item taxable as indicated in subparagraphs (1) and (2) of this § 1-11.102-2(a)—8 percent. Parts or accessories are defined to include any article—

(i) The primary use of which is to improve, repair, replace, or serve as a component part of a motor vehicle;

(ii) Designed to be attached to or used in connection with a motor vehicle or to add to its utility or ornamentation; or

(iii) The primary use of which is in connection with a motor vehicle whether or not essential to its operation or use.

Spark plugs, storage batteries, leaf springs, coils, timers, and tire chains, which are suitable for use on or in connection with, or as component parts of, a taxable motor vehicle are treated as parts or accessories whether or not primarily adapted for such use. However, the term "parts or accessories" does not include tires, inner tubes, or automobile radio and television receivers. The tax on parts or accessories does not apply to any article sold for use (or for a single resale for use) as material in the manufacture of, or as a component part of any article whether or not such article is subject to a manufacturers excise tax. The contract price of supplies purchased by any agency shall not include an amount for the manufacturers excise tax on automotive parts or accessories purchased for use in the manufacture of any article.

(b) Bodies are exempt from tax when sold by the manufacturer to a manufacturer of motor vehicles to be sold by the purchaser; however, a chassis manufacturer who purchases a body tax free is required to pay a tax on his sale of the completed vehicle as the manufacturer of both the chassis and the body. A manufacturer of motor vehicle chassis cannot sell such chassis tax free to manufacturers of motor vehicle bodies.

§ 1-11.102-3 Tires and tubes.

(a) A tax at the rates indicated in subparagraphs (1) through (5) of this § 1-11.102-3(a) is imposed on the following supplies, made wholly or in part of rubber, including synthetic and substitute rubber, sold by a manufacturer, producer, or importer:

(1) Tires of the type used on highway vehicles, which includes motor vehicles which are highway vehicles, and vehicles of the type used with motor vehicles which are highway vehicles—10 cents per pound;

(2) Other tires, which are designed to fit the wheel of any type of vehicle capable of transporting a person or burden (other than laminated tires which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent)—5 cents per pound;

(3) Inner tubes, which include any type of air container for pneumatic tires—10 cents per pound on total weight, including air valves and stems;

(4) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent—1 cent per pound; and

(5) Tread rubber, which includes any material commonly or commercially known as tread rubber or camelback of a type used in retreading or recapping tires—5 cents per pound. An exemption exists for the sale of tread rubber or camelback by a manufacturer to a purchaser for use by that purchaser other than for recapping or retreading tires of the type used on highway vehicles. In addition, if tread rubber, upon which the tax has been paid, is sold for use or is used other than for recapping or retreading tires of the type used on highway vehicles, the manufacturer is entitled to a refund or credit of the tax: *Provided,* That the credit under paragraph (b) of this § 1-11.102-3 is not available. The contract price for supplies purchased by an agency will not include an amount for the manufacturers excise tax on tread rubber to the extent that this exemption or refund or credit is available to the manufacturer. In determining weight of taxable tires under subparagraphs (1) and (2) of this § 1-11.102-3(a), metal rims or rim bases are excluded, but any other material or fastening device that forms a part of the tire is included.

The tax imposed under subparagraphs (1) and (2) of this § 1–11.102–3(a) does not apply to tires which are not more than 20 inches in diameter and not more than 1¾ inches in cross section, if such tires are of all-rubber construction without fabric or metal reinforcement, nor does it apply to tires of extruded tiring with an internal wire fastening agent.

(b) The exemption for sales for further manufacture does not apply to taxable tires and tubes (see § 1–11.202). However, if tax-paid tires and tubes normally sold in connection with the sale by a manufacturer of a taxable motor vehicle are sold therewith, a credit against the tax on the motor vehicle is allowed to the extent of the motor vehicle tax rate applied to the manufacturers purchase price on the tires and tubes. The contract price for supplies purchased by any agency shall not include an amount for manufacturers excise tax on tires and tubes to the extent that this credit is available to the manufacturer.

§ 1–11.102–4 Gasoline.

(a) A tax of 4 cents per gallon is imposed on gasoline sold by a producer or importer. Gasoline means all products commonly or commercially known as gasoline, including casinghead and natural gasoline, but excluding kerosene, gas oil, fuel oil, and any product taxable as a special motor fuel under section 4041 of the Internal Revenue Code (see § 1–11.101–6). The tax does not apply to the sale of gasoline to a producer, which is defined to include a refiner, compounder, blender, or dealer who sells gasoline exclusively to producers of gasoline.

(b) Under section 6421 of the Internal Revenue Code, the ultimate purchaser of gasoline is entitled to a refund of 2 cents per gallon for gasoline used for certain nonhighway purposes. Agencies may, to the extent economically feasible, avail themselves of such refunds. Applications for refunds shall be in accordance with pertinent requirements of the Internal Revenue Service.

§ 1–11.102–5 Lubricating oils.

(a) A tax at the indicated rates is imposed upon the following classes of lubricating oils sold, other than to another manufacturer or producer for resale, by a manufacturer or producer (but not upon oil sold by an importer):

(1) Cutting oils, which means lubricating oils sold for use in cutting and machining operations on metals, including forging, drawing, rolling, shearing, punching, and stamping—3 cents per gallon; and

(2) Other lubricating oils, which means all oils, regardless of origin, which are sold for use as a lubricant or are suitable for use as a lubricant, but not synthetic materials which possess lubricating properties or, ordinarily, products commonly known as grease—6 cents per gallon. Certain other products are not considered to be lubricating oils, and accordingly are not subject to the tax. These include petroleum, and fatty oils of vegetable, animal, fish, and marine origin which in their natural state are not sold as lubricating oils.

(b) Where the manufacturer of lubricating oil sells such oil direct to a purchaser for use by him in cutting and machining operations on metals, the manufacturer, in order to establish the right to sell such oil subject to tax at the rate of 3 cents per gallon, must obtain from the purchaser a properly executed cutting oil certificate. The form set forth in § 1–11.501–4 shall be utilized. The requirement of a cutting oil certificate is waived in respect to sales of cutting oils which are (1) packaged in sealed containers of 5 gallons or less, labeled and sold for use only in cutting and machining operations on metals, or (2) determined by the Commissioner of Internal Revenue to be suitable for use as a lubricant only in cutting and machining operations on metal.

(c) An exemption is available for lubricating oils sold by a manufacturer directly to a purchaser who uses the oil for nonlubricating purposes. In applying this exemption, oils can be grouped into two classes:

(1) Those exempted if the manufacturer obtains an exemption certificate from the purchaser in the form set forth in § 1–11.501–3; and

(2) Those exempted without an exemption certificate (this second class includes crude neat's-foot oil, electrical transformer insulating oil, white oil, lubricating oils which are packaged in sealed containers of 1 gallon or less, labeled and sold for nonlubricating purposes, and lubricating oil suitable for use as a lubricant which the Commissioner of Internal Revenue determines is used almost exclusively for nonlubricating purposes).

With the exception of oils which are packaged in sealed containers of 5 gallons or less, labeled and sold for nonlubricating purposes, or which the Commissioner determines are used almost exclusively for nonlubricating purposes, oils of these classes may not be sold tax-free to dealers for resale even though it is known that the oil will be used for nonlubricating purposes. If, however, oil upon which a tax has been paid is used for nonlubricating purposes, the manufacturer is entitled to refund or credit, irrespective of whether the oil was sold directly to the consumer by the manufacturer or was sold through a dealer. A refund or credit is also allowed when lubricating oil, upon which the 6-cent-per-gallon tax has been paid, is used as a cutting oil taxable at 3 cents per gallon. When it is economically advantageous to do so, the exemption, refund, or credit for oil sold for use or used for nonlubricating purposes, and the refund or credit for lubricating oil used as cutting oil, shall be utilized by a tax exclusive purchase or by adjustment of the contract price.

§ 1–11.102–6 Household type equipment.

A tax at the indicated rates is imposed upon the following supplies (including parts or accessories sold therewith) sold by a manufacturer, producer, or importer:

(a) Household type refrigerators, which include units not exceeding 14 cubic feet net storage space for single or multiple cabinet installations having or designed for use with, a mechanical refrigerating unit operated by electricity, gas, kerosene, or gasoline; household type units for the quick freezing or frozen storage of foods operated by electricity, gas, kerosene, or gasoline—5 percent.

(b) Self-contained air-conditioning units—10 percent.

(c) Electric, gas, and oil appliances—5 percent.

(d) Electric light bulbs and tubes, not subject to any other manufacturers tax—10 percent.

§ 1–11.102–7 Radio and television receiving sets, phonographs, and records.

A tax of 10 percent is imposed upon the following articles (including parts and accessories sold therewith) sold by a manufacturer, producer, or importer:

(a) Radio and television receiving sets, automobile radio and television receiving sets, phonographs, and combinations of any of the foregoing, unless such articles are communication, detection, or navigation equipment of the type used in commercial, military, or marine installations. The contract price of any of these articles to be used for communication, detection, or navigational purposes delivered to any agency shall not include any amount for the manufacturers excise tax, irrespective of the date of the contract, if the contract price is subject to adjustment for changes in the contractor's Federal excise tax burden. The exemption of sales for further manufacture does not apply to automobile radio and television receivers (see § 1–11.202); however, if tax-paid receivers are sold in connection with the sale by a manufacturer of a taxable motor vehicle, a credit against the tax on the motor vehicle is allowed to the extent of the motor vehicle tax rate applied to the manufacturer's purchase price on the receiver; and

(b) Radio and television components, which means chassis, cabinets, tubes, speakers, amplifiers, power-supply units, antennas of the built-in type, phonograph mechanism, and phonograph record players unless such articles are suitable for use only on or in connection with, or as a component part of, any communication, detection, or navigation equipment. Exemption from the tax is available as to taxable components which are sold for use, or are actually used as material in the manufacture of, or as a component part of, any article, whether or not such article is subject to a manufacturers excise tax. The contract price for articles purchased by any agency shall not include an amount for the manufacturers excise tax on radio and television components if this exemption is available to the manufacturer.

§ 1–11.102–8 Musical instruments.

A tax of 10 percent is imposed upon musical instruments sold by a manufacturer, producer, or importer. The tax does not apply to musical instruments sold to a religious institution for exclusively religious purposes.

§ 1–11.102–9 Sporting goods.

A tax of 10 percent is imposed upon certain types of sporting equipment (including parts or accessories sold there-

with) sold by a manufacturer, producer, or importer.

§ 1–11.102–10 Photographic equipment.

A tax at the indicated rates is imposed upon the following articles (including parts or accessories sold therewith) sold by a manufacturer, producer, or importer:

(a) Cameras, not including X-ray cameras or cameras weighing more than 4 pounds exclusive of lenses and accessories—10 percent;

(b) Camera lenses, not including still camera lenses having a focal length of more than 120 millimeters or motion picture lenses having a focal length of more than 30 millimeters—10 percent. Exemption from the tax is available as to camera lenses which are sold for use or are actually used as material in the manufacture of, or as a component part of any article, whether or not such article is subject to a manufacturers excise tax. The contract price for supplies purchased by any agency shall not include an amount for the manufacturers excise tax on camera lenses if this exemption is available to the manufacturer;

(c) Unexposed photographic film in rolls, including motion picture film—10 percent. This tax does not apply to X-ray film; unperforated microfilm; film more than 150 feet in length; or film more than 25 feet in length and more than 30 millimeters in width. A person who acquires unexposed film in a form not subject to tax and thereafter sells such unexposed film in form and dimension subject to tax is treated as a manufacturer of the film so sold by him. The manufacturer of unexposed motion picture film is entitled to a credit or refund (but not an exemption) for film used or resold for use in making newsreel motion picture films covering current news events for immediate release for public exhibition; and

(d) Electric motion or still picture projectors of the household type—5 percent.

§ 1–11.102–11 Firearms, shells, and cartridges.

(a) A tax is imposed at the rate of 10 percent upon pistols and revolvers; and at the rate of 11 percent on other firearms, shells, and cartridges sold by a manufacturer, producer, or importer. The tax does not attach when such articles are purchased with funds appropriated for the Military Departments.

(b) Chapter 53A of the Internal Revenue Code imposes a transfer tax and a tax on the manufacture of machineguns and certain other firearms. Transfer to, or manufacture for, the United States is specifically exempted.

§ 1–11.102–12 Business machines.

A tax of 10 percent is imposed upon a wide variety of business machines (including parts or accessories sold therewith), not including cash registers of the type used in registering over-the-counter retail sales or stencil-cutting machines of the type used in shipping departments in making cutout stencils for marking freight shipments, sold by a manufacturer, producer, or importer. However, the Secretary of the Treasury has authorized an exemption effective 1 January 1959 on any payment made under leases of business machines directly to the United States for its exclusive use: *Provided,* That there is included in the lease agreement a statement to the effect that this "agreement is a lease of business machines directly to the United States for its exclusive use and qualifies for exemption under the order of the Secretary of the Treasury dated April 20, 1959, authorized by section 4293 of the Internal Revenue Code of 1954." To qualify for the exemption the lease agreement must be entered into by an officer or employee of the United States who is authorized to execute contracts for and on behalf of the United States.

§ 1–11.102–13 Pens, mechanical pencils, and lighters.

(a) A tax at the indicated rates is imposed upon the sale by the manufacturer, producer, or importer of the following articles:

(1) Mechanical pencils, fountain pens, and ballpoint pens—10 percent;

(2) Mechanical lighters for cigarettes, cigars, and pipes—10 cents for each lighter but not more than 10 percent of the price for which so sold.

(b) The tax on pens, mechanical pencils, and lighters does not apply if the article also is subject to the retailers excise tax on jewelry imposed by section 4001 of the Internal Revenue Code. If the manufacturers excise tax has been paid, but the article is further processed so as to subject it to the retailers excise tax, the retailer (but not the manufacturer who originally paid the tax) is entitled to a credit to the extent of the manufacturers excise tax paid on the article (see § 1–1.101–2(c)).

§ 1–11.102–14 Matches.

A tax of 2 cents per 1,000, not to exceed 10 percent of the price for which sold, is imposed upon matches sold by a manufacturer, producer, or importer, except that the rate is 5½ cents per 1,000 for fancy wooden matches or matches having a stained dyed, or colored stick or stem, whether packed in boxes or in bulk.

§ 1–11.103 Excise taxes on facilities and services.

Chapter 33 of the Internal Revenue Code imposes excise taxes on certain facilities and services, including admissions, dues, communications, certain transportation of persons by air, and safe-deposit boxes. In general, the tax is based upon the amount paid for the service and is imposed upon the person paying for the service.

Subpart 1–11.2—Exemptions From Federal Excise Taxes

§ 1–11.200 Scope of subpart.

This subpart sets forth the applicability and scope of general exemptions, credits, and refunds from the Federal excise taxes outlined in Subpart 1–11.1, and the policy governing when such exemptions, credits, and refunds are to be claimed. Particular exemptions restricted to a single tax are set forth in Subpart 1–11.1 in the discussion of each tax.

§ 1–11.201 Retailers excise taxes.

No retailers excise tax is imposed:

(a) On the sale of any article for the exclusive use of any State, any political subdivision thereof, or the District of Columbia, or, in the case of a tax on special fuels, with respect to the use of any of the foregoing of any liquid as fuel;

(b) On the sale of any article for export or for shipment to a possession of the United States (which for the purpose of this exemption includes Puerto Rico), and in due course so exported or shipped—

(1) This exemption shall be utilized by purchasing on a tax-exclusive basis and furnishing the required proof of exportation or shipment to a possession if:

(i) The purchase is substantial, and

(ii) Exportation or shipment to a possession is intended to follow not more than 6 months after title passes to the Government.

(2) To qualify for the exemption of sales for export or for shipment to a possession.

(i) The supplies must be identified as having been sold by the manufacturer (if the tax is a retailers excise tax) for export or shipment to a possession. The words "for export or shipment to a possession" incorporated into or stamped on a contract or purchase order are acceptable to the Internal Revenue Service as evidence that the sale is for export or for shipment to a possession. In solicitations and contracts, the terms of which imply that the supplies will be either exported or shipped to a possession (e.g., delivery to a port of embarkation or special packing requirements for overseas shipment) where the purchase is not substantial and it is therefore desired to purchase on a Federal Excise tax-inclusive basis, the solicitations and the contract should clearly state that proof of export certificates will not be issued.

(ii) The supplies must be exported or shipped to a possession in due course. Proof of export or shipment will be furnished to the contractor in the form set forth in § 1–11.501–1;

(c) On the sale of any article to retailers for resale (Sales by the United States, or any agency or instrumentality thereof, are not exempt unless specifically made exempt by statute);

(d) On the sale of special motor fuels for use or used in the propulsion of vessels of war or military aircraft of the type enumerated in § 1–11.202(d);

(e) On the sale of any article of a nonprofit educational organization of any liquid as fuel.

§ 1–11.202 Manufacturers excise taxes.

No manufacturers excise tax is imposed:

(a) On the sale of any article for use by the purchaser for further manufacture or for resale to a second purchaser in further manufacture. (An article shall be treated as sold for use in further manufacture if sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another taxable article to be manufactured or produced. In the case of automobile parts and accessories, radio or television components, or camera lenses, it is not necessary that the produced article be a taxable article. This exemption does not apply to tires, inner tubes, or automobile radio or television receiving sets);

(b) On the sale of any article for export, or for shipment to a possession of the United States (which for the purpose of this exemption includes Puerto Rico). This exemption shall be obtained only when the purchase is substantial and exportation or shipment to a possession is intended to follow not more than 6 months after title passes. For proper utilization of this exemption, see § 1–11.201(b);

(c) On the sale of any article for resale to a second purchaser for export. If articles upon which a manufacturers excise tax has been paid are resold by a dealer for export, or for shipment to a possession, the manufacturer is entitled to a credit or refund of the tax paid. If it is economically advantageous to do so, this credit or refund shall be utilized by purchase from a dealer on a tax-exclusive basis and execution of the required exemption certificate set forth in § 1–11.501–1;

(d) On sales of supplies for use as fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or any foreign nation, including aircraft owned by the United States or by any foreign nation and constituting a part of the armed forces thereof, and guided missiles and pilotless aircraft owned or chartered by by the United States. This exemption and the exemption from the retailers excise tax on special motor fuels (see § 1–11.201(d)) shall be utilized by purchasing on a tax-exclusive basis and furnishing the required exemption certificate (see § 1–11.501–2) only if:

(1) The purchase is substantial;

(2) The contracting officer determines at the time of the purchase that the supplies are intended for use in vessels of war or military aircraft; and

(3) The administrative burden of insuring that the supplies are used for exempt purposes does not make use of the exemption uneconomical. Administrative difficulties normally will not exist if the particular supply is suited exclusively for use in vessels or aircraft.

If supplies upon which a manufacturers excise tax has been paid are sold by a dealer for any of the exempt uses enumerated above, the manufacturer is entitled to a credit or refund of the tax paid. If it is economically advantageous to do so, this credit or refund shall be utilized by purchase from a dealer on a tax-exclusive basis and execution of the required exemption certificate set forth in § 1–11.501–2;

(e) On the sale of any article for the exclusive use of a State or local government (including the District of Columbia); and

(f) On the sale of any article to a nonprofit educational organization for its exclusive use.

§ 1–11.203 Supplies and services for the exclusive use of the United States.

By virtue of action taken by the Secretary of the Treasury, pursuant to section 4293 of the Internal Revenue Code, exemption is available, and shall be obtained, to the extent indicated, from the following Federal excise taxes:

(a) Tax on communication services and facilities furnished directly to the United States (as distinguished from being furnished to a Government contractor) and paid for directly by the Government. (Such exemption is obtained without any exemption certificate);

(b) Tax on transportation of persons for transportation furnished the United States upon a Government transportation request. (Such exemption is obtainable by use of such transportation request); and

(c) Tax on rental of business machines (see § 1–11.102–12).

Subpart 1–11.3—State and Local Taxes

§ 1–11.301 General.

As used in this section, the term "State and local taxes" includes taxes of the several States, the District of Columbia, the possessions of the United States, Puerto Rico, and political subdivisions thereof.

§ 1–11.302 Applicability.

(a) As a general rule, purchases made by the Government itself are exempt from State and local sales and use taxes; similarly, personal and real property are exempt from State and local property taxes when the property is both owned and possessed by the Government. These exemptions shall be made use of to the fullest extent available when Government property is located in a State or local tax jurisdiction, or when purchases are made directly by the Government, by asserting the Government's immunity from taxation of its property by States and localities, and in case of purchases, by executing an approved tax exemption certification.

(b) However, when purchases are not made by the Government itself, but by a prime contractor of the Government or by a subcontractor under a prime contract, the right to an exemption of the transaction from a sales or use tax may not rest on the Government's immunity from direct taxation by States and localities. It may rest instead on provisions of the particular State or local law involved, or in some cases, the transaction may not in fact be expressly exempt from the tax. Similarly, when property is owned by the Government, but the property is in the possession of a contractor or subcontractor on tax day, situations may arise where States or localities believe they may have the right to tax the property directly or to tax the contractor's or subcontractor's possession of, interest in, or use of that property.

(c) Whenever there is any doubt as to the availability of the Government's immunity or exemption from any State or local tax, the matter shall be handled in accordance with § 1–11.000(b).

Subpart 1–11.4—Contract Clauses

§ 1–11.401 Fixed-price type contracts.

The clauses prescribed in this subpart are for use in fixed-price type contracts except those to be performed entirely outside the United States, its possessions, and Puerto Rico.

§ 1–11.401–1 Advertised and certain negotiated contracts.

(a) *Use of clause.* Except as provided in § 1–11.401–4, the clause set forth in paragraph (c) of this § 1–11.401–1 shall be used in:

(1) All formally advertised contracts except construction contracts;

(2) All formally advertised construction contracts when the contract price may reasonably be expected to exceed $10,000;

(3) Negotiated fixed-price type contracts in excess of $10,000 where the contracting officer is satisfied, because of competition or otherwise, that the contract price does not include any contingency for State and local taxes; and

(4) At the discretion of the contracting officer in negotiated fixed-price type contracts in excess of $2,500 but not in excess of $10,000.

(b) *Description.* The clause provides that the contract price includes all applicable taxes. It provides for an increase or decrease in the contract price to compensate for changes in applicable Federal excise taxes or duties. It does not provide for any adjustment in the contract price to compensate for changes in State or local taxes.

(c) *Contract clause.*

FEDERAL, STATE, AND LOCAL TAXES

(a) Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties.

(b) Nevertheless, with respect to any Federal excise tax or duty on the transactions or property covered by this contract, if a statute, court decision, written ruling, or regulation takes effect after the contract date, and—

(1) Results in the Contractor being required to pay or bear the burden of any such Federal excise tax or duty or increase in the rate thereof which would not otherwise have been payable on such transactions or property, the contract price shall be increased by the amount of such tax or duty or rate increase: *Provided,* That the Contractor if requested by the contracting officer, warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price as a contingency reserve or otherwise; or

(2) Results in the Contractor not being required to pay or bear the burden of, or in his obtaining a refund or drawback of, any such Federal excise tax or duty which would otherwise have been payable on such transactions or property or which was the basis of an increase in the contract price, the contract price shall be decreased by the amount of the relief, refund, or drawback, or that amount shall be paid to Government, as directed by the Contracting Officer. The contract price shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden of, or does not obtain a refund or drawback of, any such Federal excise tax or duty.

(c) No adjustment pursuant to paragraph (b) above will be made under this contract unless the aggregate amount thereof is or may reasonably be expected to be over $100.

(d) As used in paragraph (b) above, the term "contract date" means the date set for the bid opening, or if this is a negotiated contract, the date of this contract. As to additional supplies or services procured by modification to this contract, the term "contract date" means the date of such modification.

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government, upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the direction of the Contracting Officer.

(f) The Contractor shall promptly notify the Contracting Officer of matters which will result in either an increase or decrease in the contract price, and shall take action with respect thereto as directed by the Contracting Officer.

§ 1–11.401–2 Certain negotiated contracts.

(a) *Use of clause.* Except as provided in § 1–11.401–4, the clause set forth in paragraph (d) of this § 1–11.401–2 shall be used in all negotiated fixed-price contracts in excess of $10,000 when the contracting officer is not satisfied that the contract price excludes contingencies for State and local taxes.

(b) *Description.* The clause provides that the contract price includes all applicable Federal, State, and local taxes. It provides for an increase or decrease in the contract price to compensate for changes in Federal excise taxes or duties, and, with some exceptions, for changes in State and local taxes.

(c) *Instruction.* If the clause set forth in paragraph (d) of this § 1–11.401–2 is used and the contract price includes an estimated amount for anticipated taxes on completed supplies covered by the contract or on the contractor's possession of, interest in, or use of property, title to which is in the Government, the contracting officer shall (1) include in the contract file detailed information with regard thereto and (2) insure that the contract price does not include taxes not allowable under § 1–15.205–41(a).

(d) *Contract clause.*

FEDERAL, STATE, AND LOCAL TAXES

(a) As used throughout this clause, the term "contract date" means the date of this contract. As to additional supplies or services procured by modification of this contract, the term "contract date" means the date of such modification.

(b) Except as may be otherwise provided in this contract, the contract price includes, to the extent allocable to this contract, all Federal, State, and local taxes which, on the contract date:

(1) By Constitution, statute, or ordinance, are applicable to this contract, or to the transactions covered by this contract, or to property or interests in property; or

(2) Pursuant to written ruling or regulation, the authority charged with administering any such tax is assessing or applying to, and is not granting or honoring an exemption for, a contractor under this kind of contract, or the transactions covered by this contract, or property or interests in property.

(c) Except as may be otherwise provided in this contract, duties in effect on the contract date are included in the contract price, to the extent allocable to this contract.

(d)(1) If the Contractor is required to pay or bear the burden—

(i) Of any tax or duty which either was not to be included in the contract price pursuant to the requirements of paragraphs (b) and (c), or of a tax or duty specifically excluded from the contract price by a provision of this contract; or

(ii) Of an increase in rate of any tax or duty, whether or not such tax or duty was excluded from the contract price; or

(iii) Of any interest or penalty on any tax or duty referred to in (i) or (ii) above; the contract price shall be increased by the amount of such tax, duty, interest, or penalty allocable to this contract: *Provided,* That the Contractor, if requested by the Contracting Officer, warrants in writing that no amount of such tax, duty, or rate increase was included in the contract price as a contingency reserve or otherwise; and *Provided further,* That liability for such tax, duty, rate increase, interest, or penalty was not incurred through the fault or negligence of the Contractor or his failure to follow instructions of the Contracting Officer.

(2) If the Contractor is not required to pay or bear the burden, or obtains a refund or drawback, in whole or in part, of any tax, duty, interest, or penalty which:

(i) Was to be included in the contract price pursuant to the requirements of paragraphs (b) and (c);

(ii) Was included in the contract price; or

(iii) Was the basis of an increase in the contract price; the contract price shall be decreased by the amount of such relief, refund, or drawback allocable to this contract, or the allocable amount of such relief, refund, or drawback shall be paid to the Government, as directed by the Contracting Officer. The contract price also shall be similarly decreased if the Contractor, through his fault or negligence or his failure to follow instructions of the Contracting Officer, is required to pay or bear the burden, or does not obtain a refund or drawback of any such tax, duty, interest, or penalty. Interest paid or credited to the Contractor incident to a refund of taxes shall inure to the benefit of the Government to the extent that such interest was earned after the Contractor was paid or reimbursed by the Government for such taxes.

(3) Invoices or vouchers covering any adjustment of the contract price pursuant to this paragraph (d) shall set forth the amount thereof as a separate item and shall identify the particular tax or duty involved.

(4) This paragraph (d) shall not be applicable to social security taxes; income and franchise taxes, other than those levied on or measured by (i) sales or receipts from sales, or (ii) the Contractor's possession of, interest in, or use of property, title to which is in the Government; excess profits taxes; capital stock taxes; unemployment compensation taxes; or property taxes, other than such property taxes, allocable to this contract, as are assessed either on completed supplies covered by this contract, or on the Contractor's possession of, interest in, or use of property, title to which is in the Government.

(5) No adjustment pursuant to this paragraph (d) will be made under this contract unless the aggregate amount thereof is or may reasonably be expected to be over $100.

(e) Unless there does not exist any reasonable basis to sustain an exemption, the Government upon request of the Contractor, without further liability, agrees, except as otherwise provided in this contract, to furnish evidence appropriate to establish exemption from any tax which the Contractor warrants in writing was excluded from the contract price. In addition, the Contracting Officer may furnish evidence appropriate to establish exemption from any tax that may, pursuant to this clause, give rise to either an increase or decrease in the contract price. Except as otherwise provided in this contract, evidence appropriate to establish exemption from duties will be furnished only at the discretion of the Contracting Officer.

(f)(1) The Contractor shall promptly notify the Contracting Officer of all matters pertaining to Federal, State, and local taxes, and duties, that reasonably may be expected to result in either an increase or decrease in the contract price.

(2) Whenever an increase or decrease in the contract price may be required under this clause, the Contractor shall take action as directed by the Contracting Officer, and the contract price shall be equitably adjusted to cover the costs of such action, including any interest, penalty, and reasonable attorneys' fees.

§ 1–11.401–3 Supplementary clauses.

(a) *Contracts performed in possessions of the United States or Puerto Rico.* When a contract will be performed in whole or in part in a possession of the United States or in Puerto Rico, and either the clause set forth in § 1–11.401–1 or that in § 1–11.401–2 is used, the contract shall contain the following supplementary clause:

TAXES

The term "local taxes" as used in the clause of this contract entitled "Federal, States, and local taxes" includes taxes imposed by a possession of the United States, and the Commonwealth of Puerto Rico.

(b) *Contracts for supplies to be exported.* When a contract containing either the clause set forth in § 1–11.401–1 or that in § 1–11.401–2 will be for supplies to be exported to foreign destinations and it is determined that the amounts of Federal Excise Taxes or drawbacks of duties involved are substantial, a clause substantially as follows should be included in invitations and solicitations:

FEDERAL EXCISE TAXES AND DUTIES

(a) The items covered by this invitation for bids are being procured for export. Bidders are requested to exclude from their bid prices all Federal excise taxes from which this transaction is exempt by virtue of exportation and also an amount equal to any drawback or refund of import duties which may be obtained upon shipment of the supplies. Bids will be evaluated and payments made exclusive of the amounts stated above.

(b) Upon the timely request of the Contractor, the Government will furnish such proof of export as may be necessary to establish an exemption from Federal excise taxes or to enable the Contractor to obtain any applicable refund or drawback for his own account.

The clause set forth above may be appropriately amended by deletion of references to drawbacks, if shipment to a possession of the United States or to Puerto Rico is contemplated.

§ 1–11.401–4 Matters requiring special consideration.

(a) A contract may, in accordance with paragraph (c) of this § 1–11.401–4, provide that the contract price include or exclude a specific tax, or require that the contractor take certain actions with regard to nonpayment, payment, protest, or other treatment of a specific tax. Such special treatment may be required, for example, where the State or local tax law has been recently changed, where there is doubt as to the applicability or allocability of the tax, or where the applicability of the tax is being litigated.

(b) Special consideration should be accorded taxes assessed on the contractor's possession of, interest in, or use of Government-owned real or personal property. The following clause may be inserted in any contract under which the contractor has possession of property to which the Government has title on tax assessment date, pursuant to progress payment clauses or otherwise;

All property taxes assessed on the Contractor's possession of, interest in, or use of property, title to which is in the Government, are excluded from the contract price.

(c) The specific provisions described in paragraph (a) of this § 1–11.401–4 and the additional clause set forth in paragraph (b) of this § 1–11.401–4 shall be used in accordance with agency procedures.

(d)(1) Whether State or local taxes are applicable to a purchase of supplies by the Government may depend upon the place and terms of delivery. For example, if the legal incidence of a State tax is on the vendor, and performance of the contract and delivery to the Government are in that State, the tax may apply. If, however, the contract requires delivery to the Government outside the State, the tax may not apply because the transaction is in interstate commerce. The form of bill of lading used (i.e., Government bill, commercial

bill, commercial bill convertible to Government bill at destination) may also affect the taxability of the transaction.

(2) Where a contract will be in a substantial amount, available alternative places and terms of delivery should be considered in the light of possible tax consequences.

(e) When Government property is furnished under a facilities contract, the contracting officer shall review the facilities contract when negotiating a subsequent supply contract to assure that the contractor is not reimbursed twice for the same taxes.

§ 1–11.402 Cost-reimbursement type contracts.

No specific tax clause is required in any cost-reimbursement type contract. In all such contracts the problem of Federal, State, and local taxes (which presents solely a question of allowability of costs in connection with the performance of cost-reimbursement type contracts) is treated in Part 1–15 of this chapter.

Subpart 1–11.5—Tax Exemption Forms

§ 1–11.500 Scope of subpart.

This subpart sets forth procedures to provide evidence to establish basis for exemptions from Federal, State, and local taxes, and suggested forms to be used.

§ 1–11.501 Federal excise tax exemption forms.

(a) Unless the contract otherwise requires, evidence of exemption shall not be issued if the amount of taxes on any one invoice or purchase is one dollar or less.

(b) With respect to the forms set out in §§ 1–11.501–2, 1–11.501–3, and 1–11.501–4, the Internal Revenue Service will accept one certificate covering all orders under a single contract for a specified period not exceeding four calendar quarters.

§ 1–11.501–1 Certificate of export to a possession or Puerto Rico.

The following form of exemption certificate which is not intended for use as proof in claiming drawback of import taxes, may be used as proof of exportation or shipment to a possession or Puerto Rico, in accordance with §§ 1–11.201(b) and 1–11.202(b).

CERTIFICATE OF EXPORT

(For use by purchasers of articles for export or shipment to a possession under sections 4056 and 4221(a)(2), Internal Revenue Code of 1954.)

---------- 19--

(Name of contract)

The undersigned does hereby certify that

(Quantity and description of supplies)

which were purchased for export, or for shipment to a possession of the United States or to Puerto Rico, under contract No. ------, where in fact exported to a foreign country, or shipped to a possession of the United States or to Puerto Rico, and a copy of the export bill of lading No. ------ or loading manifest No. ------ pursuant to which the supplies were shipped, is being retained in the files of ----------,

---

(Official address of office)

(Signature)

(Title)

(Address)

§ 1–11.501–2 Exemption certificate for supplies for vessels of war.

The following form of exemption certificate may be used in claiming an exemption for supplies for vessels of war (including aircraft), in accordance with §§ 1–11.201(d) and 1–11.202(d).

EXEMPTION CERTIFICATE

(For use by purchasers of articles for use as fuel supplies, ships' stores, or legitimate equipment on certain vessels under sections 4041(e) and 4221(a)(3), Internal Revenue Code of 1954.)

---------- 19--

The undersigned hereby certifies that he is an authorized agent of the United States of America and that the articles or articles specified in the accompanying order, or as specified below or on the reverse side hereof, will be used only for fuel supplies, ships' stores, sea stores, or legitimate equipment on vessels of war of the United States or of a foreign nation, including aircraft owned by the United States or by a foreign nation and constituting a part of the armed forces thereof.

The undersigned understands that if the article, or articles are used for any purpose other than as stated in this certificate, or are resold or otherwise disposed of, the purchaser must report such fact to the manufacturer; or, in the case of special motor fuel, that if the fuel is sold or used otherwise than as stated in this certificate and for a taxable purpose specified in section 4041(b) of the Internal Revenue Code, liability for the tax upon such sale or use will attach. The undersigned also understands that the purchaser must be prepared to establish by satisfactory evidence the purpose for which the article was used.

The fraudulent use of this certificate for the purpose of securing exemption from the payment or adjustment of taxes will subject the guilty party to a fine of not more than $10,000 or imprisonment for not more than five (5) years, or both, together with costs of prosecution.

(Signature)

(Title)

(Address)

§ 1–11.501–3 Exemption certificate for oil used for nonlubricating purposes.

The following form of certificate will be acceptable for purposes of exemption, in accordance with § 1–11.102–5(c)(i) and must be adhered to in substance.

CERTIFICATE OF NONLUBRICATING USE

(For use by purchaser of lubricating oil subject to tax under section 4091, Internal

Revenue Code of 1954, for use by purchaser for nonlubricating purposes.)

Contract:
Contract period:
Contractor:
Product:
End use:

The undersigned hereby certifies that he is an authorized agent of the United States of America and that the product being purchased under the contract identified above will not be used or resold for lubrication, but will be used for the purpose shown.

The undersigned understands that the purchaser must be prepared to establish by satisfactory evidence the actual use or disposition made of such oil, and that upon its use of the oil for a lubricating purpose, or upon its sale or other disposition of the oil, it is required to notify the manufacturer.

The fraudulent use of this certificate for the purpose of purchasing oil tax free will subject the guilty party to a fine of not more than $10,000 or imprisonment for not more than five (5) years, or both, together with the costs of prosecution.

(Signature)

(Title)

(Address)

§ 1–11.501–4 Cutting oil certificate.

The following form of certificate will be acceptable for purposes of exemption, in accordance with § 1–11.102–5(b) and must be adhered to in substance.

CUTTING OIL CERTIFICATE

(For use by purchaser of lubricating oil subject to tax under section 4091 of the Internal Revenue Code of 1954, for use by purchaser in cutting and machining operations on metals.)

---------- 19--

Contract:
Contract period:
Contractor:
Product:
End use:

The undersigned certifies that he is an authorized agent of the United States of America and that the oil covered by the contract identified above is purchased for the use indicated as a lubricant in cutting and machining operations on metals.

The undersigned understands that the purchaser must be prepared to establish by satisfactory evidence the actual use or disposition made of such oil, and that its use of the oil for a lubricating purpose other than in cutting and machining operations on metals, or upon its sale or other disposition of the oil, it is required to notify the manufacturer.

The fraudulent use of this certificate for the purpose of purchasing oil subject to tax at the rate of 3 cents a gallon, rather than 6 cents a gallon, will subject the guilty party to a fine of not more than $10,000, or imprisonment for not more than five (5) years, or both, together with the costs of prosecution.

(Signature)

(Title)

(Address)

§ 1–11.502 State and local tax exemption forms.

§ 1–11.502–1 Types of evidence of exemption.

Evidence appropriate to establish exemption or immunity from State or local taxes will vary depending upon the grounds of exemption or immunity claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence includes but is not limited to the following:

(a) U.S. Government Tax Exemption Certificate (Standard Form 1094);

(b) A copy of the contract or a portion thereof;

(c) Shipping documents indicating that shipments are in interstate or foreign commerce;

(d) A State or local form indicating that supplies or services are for the exclusive use of the United States; or

(e) Any other State or locally required form, certificate, or document to establish general or specific exemption.

§ 1–11.502–2 When evidence of exemption is to be furnished.

(a) Unless there does not exist any reasonable basis to sustain a claimed exemption, a contractor or vendor will be furnished evidence of exemption under a:

(1) Contract which contains the clause prescribed in either §§ 1–11.401–1 or 1–11.401–2 in accordance with the terms of those clauses;

(2) Cost-reimbursement type contract at the request of the contractor or at the discretion of the contracting officer; or

(3) Contract or purchase order which contains no provision regarding taxes, at the request of the contractor or at the discretion of the contracting officer, if the contractor warrants that the contract price does not include the tax, or if he consents to a reduction in the contract price if the evidence of exemption is accepted by the taxing jurisdiction.

(b) In case of disagreement as to whether there exists a reasonable basis upon which to sustain exemption of any transaction, the matter should be resolved in accordance with § 1–11.000(b).

PART 1-12—LABOR

Sec.
1-12.000 Scope of part.

Subpart 1-12.1—Basic Labor Policies

1-12.100 General.
1-12.101 Labor relations.
1-12.101-1 General.
1-12.101-2 Contract pricing and administration.
1-12.102 Overtime, extra-pay shifts, and multi-shift work.
1-12.102-1 Definitions.
1-12.102-2 Policy.
1-12.102-3 Procedures.
1-12.102-4 Approvals.
1-12.102-5 Other authorized overtime.
1-12.103 Federal and State labor requirements.
1-12.104 Meeting manpower requirements.
1-12.105 Location allowances at unfavorable sites.
1-12.105-1 Description.
1-12.105-2 Policy.
1-12.105-3 Procedures.

Subpart 1-12.2—Convict Labor

1-12.201 Basic requirement.
1-12.202 Applicability.
1-12.203 Contract clause.

Subpart 1-12.3—Contract Work Hours Standards Act (Other than Construction Contracts)

1-12.300 Scope of subpart.
1-12.301 Statutory requirement.
1-12.302 Applicability.
1-12.303 Contract clause.
1-12.304 Variations and tolerances.

Subpart 1-12.4—Labor Standards in Construction Contracts

1-12.400 Scope of subpart.
1-12.401 Statutory and regulatory requirements.
1-12.401-1 Davis-Bacon Act.
1-12.401-2 Copeland Act.
1-12.401-3 Contract Work Hours Standards Act.
1-12.401-4 Department of Labor regulations.
1-12.402 Applicability.
1-12.402-1 Construction contracts.
1-12.402-2 Supply, service, maintenance, or other contracts involving construction.
1-12.403 Contract clauses.
1-12.403-1 Clauses for general use.
1-12.403-2 Overseas contracts.
1-12.403-3 Contracts with a State or political subdivision.
1-12.404 Administration and enforcement.
1-12.404-1 General.
1-12.404-2 Wage determinations.
1-12.404-3 Additional classifications.
1-12.404-4 Apprentices.
1-12.404-5 Subcontracts.
1-12.404-6 Payrolls and statements.
1-12.404-7 Investigations.
1-12.404-8 Reports of violations.
1-12.404-9 Suspensions and deductions of contract payments.
1-12.404-10 Restitution.
1-12.404-11 Contract terminations.
1-12.404-12 Cooperation with Department of Labor.
1-12.404-13 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work Hours Standards Act.

Subpart 1-12.5—[Reserved]

Subpart 1-12.6—Walsh-Healey Public Contracts Act

1-12.601 Statutory requirement.
1-12.602 Applicability.
1-12.602-1 General.
1-12.602-2 Statutory exemptions.
1-12.602-3 Department of Labor regulations and interpretations.
1-12.603 Determinations of eligibility as manufacturer or regular dealer.
1-12.603-1 Manufacturer.
1-12.603-2 Regular dealer.
1-12.603-3 Coal dealers.
1-12.603-4 Agents.
1-12.604 Responsibilities of contracting officers.
1-12.605 Contract clause.

Subpart 1-12.7—Fair Labor Standards Act of 1938

1-12.701 Basic statute.
1-12.702 Rulings on applicability or interpretation.

Subpart 1-12.8—Equal Opportunity in Employment

1-12.800 Scope of subpart.
1-12.801 Policy.
1-12.802 Definitions.
1-12.803 Basic requirements.
1-12.803-1 Government contracts.
1-12.803-2 Equal opportunity clause.
1-12.803-3 Federally assisted construction contracts.
1-12.803-4 Prime contractors and subcontractors.
1-12.803-5 Adaptation of language.
1-12.804 Exemptions.
1-12.804-1 General.
1-12.804-2 Specific contracts.
1-12.804-3 Facilities not connected with contracts.
1-12.804-4 Effect of exemption.
1-12.804-5 Withdrawal of exemption.
1-12.805 Administration.
1-12.805-1 Duties of agencies.
1-12.805-2 Educational responsibility.
1-12.805-3 Posting of notices.
1-12.805-4 Compliance reports.
1-12.805-5 Compliance reviews.
1-12.806-6 Complaints.
1-12.805-7 Processing of matters by the agency.
1-12.805-8 Sanctions.
1-12.806 [Reserved]
1-12.807 Hearings.
1-12.807-1 General.
1-12.807-2 Delegation of authority.
1-12.807-3 Notice and contents.
1-12.807-4 Conduct of hearings.
1-12.807-5 Findings and recommended conclusions.
1-12.808 Reinstatement of ineligible contractors or subcontractors.
1-12.809 Certificates of merit.
1-12.810 Solicitations or advertisements for employees.
1-12.811 Access to records of employment.
1-12.812 Rulings and interpretations.
1-12.813 Existing contracts and subcontracts.

Subpart 1-12.9—[Reserved]

Subpart 1-12.10—Nondiscrimination Because of Age

1-12.1000 Scope of Subpart.
1-12.1001 Policy.
1-12.1002 Implementation of policy.
1-12.1003 Handling of complaints.

AUTHORITY: The provisions of this Part 1-12 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1–12.000 Scope of part.

This part deals with general policies regarding labor, so far as they relate to procurement; sets forth certain pertinent labor laws and requirements, indicating in connection with each its applicability and any procedures thereunder; and prescribes the contract clauses with respect to each labor law or requirement.

Subpart 1–12.1—Basic Labor Policies

§ 1–12.100 General.

The policies and procedures stated in this Subpart 1–12.1 are recommendatory and are for the guidance of executive agencies.

§ 1–12.101 Labor relations.

§ 1–12.101–1 General.

(a) With respect to Government contract activities, procurement agencies should maintain and encourage the best possible relations with industry and labor in order that the Government may procure needed supplies and services without delay. All problems arising out of the Government contract labor relations of private contractors, and all communications with labor organizations or Federal agencies relative thereto, shall be handled in accordance with agency procedures.

(b) Procurement agencies should remain impartial in, and should refrain from taking a position on, the merits of a dispute between labor and private management. No procuring activity should undertake the conciliation, mediation, or arbitration of a labor dispute.

§ 1–12.101–2 Contract pricing and administration.

(a) Nothing in § 1–12.101–1 should be construed to relieve a contracting officer from his responsibility to achieve efficient contract pricing and administration.

(b) Contractor labor policies and compensation practices, whether or not they are provided for in labor-management agreements, are not an acceptable basis for allowance of cost in cost-reimbursement type contracts or for recognition of costs in pricing fixed-price type contracts if and insofar as they result in unreasonable costs to the Government. Part 1–15, particularly § 1–15.205–6(a), explains that the term "unreasonable costs" includes costs resulting from practices that are discriminatory against the Government or unwarranted in the context of the particular contract work.

(c) In some cases, labor disputes may give rise to work stoppages which cause delays in the timely performance of important contracts. The contracting officer should impress on the contractor that he will be held accountable for delays that are reasonably avoidable. It should be emphasized that the standard contract clauses dealing with default, excusable delays, etc., do not relieve the contractor of delays that are not beyond his control or, with respect to delays of subcontractors, that are not beyond the control of both the contractor and the subcontractor. A delay caused by a strike which is an unfair labor practice, as identified in the National Labor Relations Act, as amended (29 U.S.C. 158), and which the contractor could not reasonably prevent can be excused only to the extent that it does not go beyond the point at which a reasonably diligent contractor could resume the delayed performance by taking action toward ending the strike by such means as:

(1) Filing a charge with the National Labor Relations Board so as to permit the NLRB to seek injunctive relief in court;

(2) Recourse to other available Government procedures; or

(3) Use of private boards or organizations for the settlement of disputes.

§ 1–12.102 Overtime, extra-pay shifts, and multi-shift work.

§ 1–12.102–1 Definitions.

As used in this § 1–12.102, the following terms shall have the meanings set forth:

(a) "Normal workweek" and "normal workday" mean, generally, a workweek of 40 hours and a workday of 8 hours, respectively. In any area outside the United States, its possessions, and Puerto Rico, a workweek longer than 40 hours, or a workday longer than 8 hours, will be considered normal if (1) such workweek or workday does not exceed that which is normal for such area, as determined by local custom, tradition, or law, and (2) hours worked in excess of 40 in such workweek, or 8 in such workday, are not compensated at a premium rate of pay.

(b) "Overtime" means time worked by a contractor's employee in excess of the employee's normal workweek or normal workday.

(c) "Shift premium" means the difference between the compensation paid to an employee at the contractor's regular rate of pay for the base or regular work shift and that paid at the regular rate of pay for extra-pay-shift work.

(d) "Overtime premium" means the difference between the compensation paid to an employee at the contractor's

regular rate of pay for the work period or shift involved and that paid for hours worked overtime.

§ 1–12.102–2 Policy.

Where the cost to the Government may be affected, contracts should be performed, so far as practicable, without the use of overtime, extra-pay shifts, or multi-shifts, and, in particular, without the use of overtime as a regular employment practice. Any required overtime, extra-pay shifts, and multi-shifts should be limited to the minimum needed for accomplishment of the specific work.

§ 1–12.102–3 Procedures.

(a) To the extent practicable, invitations for bids and requests for proposals shall not specify delivery or performance schedules which may be reasonably anticipated to necessitate overtime, at Government expense.

(b) In the negotiation of contracts in excess of $10,000, the contracting officer, consistent with the nature and size of the procurement, should use his best efforts (1) to ascertain the extent to which proposals and quotations are based on the payment of overtime premiums and shift premiums, and (2) to negotiate contract prices or estimated costs which are not based on the payment of overtime premiums or shift premiums, taking into consideration the practicability of procurement from other sources of all or part of the requirement.

(c) All contracts, other than firm fixed-price contracts or fixed-price contracts with escalation (which do not provide for any labor escalation), should provide that payment of overtime premiums and shift premiums shall be allowed, or considered in pricing, only to the extent approved in accordance with § 1–12.102–4, or as provided in § 1–12.102–5.

(d) Overtime for which overtime premiums would be at Government expense should not be approved under a contract where the contractor is already obligated, without the right to additional compensation, to meet the required delivery date.

(e) Where overtime premiums or shift premiums are being paid at Government expense in connection with the performance of Government contracts, the continued need therefor should be subject to periodic review in accordance with agency procedures.

§ 1–12.102–4 Approvals.

(a) In the three following situations, overtime premiums and shift premiums at Government expense may be considered proper for approval when determined in writing by the agency head, or his designee or designees, that approval:

(1) Is necessary to meet delivery or performance schedules, and such schedules are determined to be extended to the maximum consistent with essential program objectives;

(2) Is necessary to make up for delays which are beyond the control and without the fault or negligence of the contractor and, in construction contracts, which result from unforeseeable causes; or

(3) Is necessary to eliminate foreseeable production bottlenecks of an extended nature which cannot be eliminated in any other way.

(b) Approvals should ordinarily be prospective, but may be retroactive where justified by the circumstances.

(c) Such approvals may be for an individual contract, project, or program, or for a plant, division, or company, as most practicable.

§ 1–12.102–5 Other authorized overtime.

(a) Approved overtime premiums or shift premiums may be paid for work, without the approval required by § 1–12.102–4:

(1) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) When by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) In the performance of tests, industrial processes, laboratory procedures, loading or unloading of transportation media, and operations in flight or afloat, which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(4) When lower overall cost to the Government will result.

(b) The cost of such overtime premiums or shift premiums may be allowed, or considered in pricing, only to the extent the amount thereof is reasonable and properly allocable to the work involved.

§ 1–12.103 Federal and State labor requirements.

Executive agencies should cooperate, and require contractors to cooperate, to the fullest extent possible, with Federal and State agencies responsible for enforcing labor requirements with respect to such matters as safety, health and sanitation, maximum hours and minimum wages, equal pay for women, and child and convict labor.

§ 1–12.104 Meeting manpower requirements.

It is the policy of executive agencies to cooperate with and to encourage contractors to utilize, to the fullest extent practicable, the United States Employment Service (USES) and its affiliated local State Employment Service Offices in matters pertaining to meeting contractors' manpower (labor supply) requirements, including the recruitment of workers in all occupations and skills both from local labor market areas and through the Federal-State manpower clearance system to staff new or expanding plant facilities. Local State Employment Service Offices are operated in every State and in the District of Columbia, Puerto Rico, Guam, and the Virgin Islands. In addition to providing recruitment assistance to contractors who need and desire it, cooperation with the local State Employment Service Offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

§ 1–12.105 Location allowances at unfavorable sites.

§ 1–12.105–1 Description.

"Location allowances", sometimes called "supplemental pay" or "incentive pay", are compensation in addition to normal wages or salaries and are paid by contractors to especially compensate or induce employees to undertake or continue work at locations which may be isolated or in an unfavorable environment. Location allowances include extra wage or salary payments in the form of station allowances, bonuses, extended per diem, or mileage payments for daily commuting; they also include such benefits as contractor-furnished housing.

§ 1–12.105–2 Policy.

Payments of location allowances shall be allowed as costs under cost-reimbursement type contracts, or recognized in pricing fixed-price type contracts, only where and so long as the isolation or unfavorable environment of the site makes such payments necessary to the accomplishment of the contract work without unacceptable delays. Whether the site is so isolated, or its environment is so unfavorable, as to require location allowances is to be determined in the light of (1) its location and climate; (2) the availability and adequacy of housing within reasonable commuting distance; and (3) the availability and adequacy of educational, recreational, medical, and hospital facilities. The extent to which compensation includes location allowances is to be determined by comparing it with (a) the contractor's normal compensation policy, including pay scales at his principal operating locations; (b) pay scales of other contractors and concerns operating at or near the site; and (c) compensation paid by other concerns within the same industry for similar services elsewhere.

§ 1–12.105–3 Procedures.

(a) Locations at which location allowances are being paid shall be reviewed at least once a year to determine whether such allowances should continue to be allowed or recognized in accordance with § 1–12.105–2.

(b) Where two or more contracting activities of an agency have concurrent contracts at a single facility and the approval of location allowances by one such activity is likely to affect the performance of, or payments in connection with, contracts of another such activity, the activity exercising jurisdiction over the facility shall coordinate with the other interested activities in applying the policy in § 1–12.105–2 and shall schedule the reviews required by (a) of this § 1–12.105–3. Where two or more facilities are so geographically located that determinations as to location allowances at one may affect the other, the activities

involved shall coordinate with each other in applying the policy. The foregoing procedure in this § 1–12.105–3(b) should also be applied where different agencies are known to have concurrent contracts at a single facility or where the action of one agency may affect the interests of another agency.

Subpart 1–12.2—Convict Labor

§ 1–12.201 Basic requirement.

Pursuant to the policy originally set forth in the Act of February 23, 1887 (18 U.S.C. 436), and in accordance with the requirements of Executive Order 325–A of May 18, 1905, all contracts entered into by any executive agency involving the employment of labor within the United States shall, unless otherwise provided by law, contain a clause prohibiting the employment of persons undergoing sentences of imprisonment at hard labor imposed by State or municipal criminal courts.

§ 1–12.202 Applicability.

The requirement set forth in § 1–12.201 applies, except as stated in this § 1–12.202, to all contracts involving the employment of labor within the United States. The requirement does not prohibit the employment of persons on parole or probation, or of persons who have been pardoned or who have served their terms. Furthermore, the requirement does not apply to contracts:

(a) Subject to the provisions of the Walsh-Healey Public Contracts Act (see Subpart 1–12.6) which contains its own requirement that "no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract."

(b) For the purchase of supplies or services from Federal Prison Industries, Inc.

(c) For the purchase from any State prison of finished supplies which may be secured in the open market or from existing stocks as distinguished from supplies requiring special fabrication.

§ 1–12.203 Contract clause.

The contract clause required is as follows:

CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

Subpart 1–12.3—Contract Work Hours Standards Act (Other Than Construction Contracts)

§ 1–12.300 Scope of subpart.

This subpart deals with the requirements of the Contract Work Hours Standards Act, 40 U.S.C. 327–330, insofar as they apply to contracts other than construction contracts dealt with in Subpart 1–12.4.

§ 1–12.301 Statutory requirement.

The contract Work Hours Standards Act provides that the wages of every laborer and mechanic employed by any contractor or subcontractor in his performance of work on any contract of the character specified in section 103 of that Act shall be computed on the basis of a standard workday of eight hours and a standard workweek of forty hours. Work in excess of such standard workday or workweek is permissible, provided that the wages of any laborer or mechanic so employed include compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in any workweek in excess of eight hours in any calendar day or in excess of forty hours in the workweek, as the case may be. "Laborers and mechanics" include watchmen, guards, and workmen, other than seamen, performing services in connection with dredging or rock excavation in rivers or harbors.

§ 1–12.302 Applicability.

The requirement set forth in § 1–12.301 applies, except as stated in this § 1–12.302, to all contracts which may require or involve the employment of laborers or mechanics either by a prime contractor or subcontractor. The requirement does not apply to the following:

(a) Contracts of $2,500 or less (but see Subpart 1–12.4 as to construction contracts over $2,000).

(b) Contracts for the purchase of supplies or materials or articles ordinarily available in the open market.

(c) Contracts for transportation by land, air, or water, or for the transmission of intelligence.

(d) Contracts under which work is to be performed solely within a foreign country or within a territory under the jurisdiction of the United States other than a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (Ch. 345, 76 Stat. 462, American Samoa, Guam, Wake Island and the Canal Zone).

(e) Contracts under which all work to be performed is subject to the provisions of the Walsh-Healey Public Contracts Act.

(f) Any other contracts exempt under regulations of the Secretary of Labor (29 CFR 5.14).

§ 1–12.303 Contract clause.

The contract clause set forth in this § 1–12.303 shall be included in contracts to which the requirement in § 1–12.301 applies:

CONTRACT WORK HOURS STANDARDS ACT—OVERTIME COMPENSATION

This contract, to the extent that it is of a character specified in the Contract Work Hours Standards Act (40 U.S.C. 327–330), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) *Witholding for unpaid wages and liquidated damages.* The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) *Subcontracts.* The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) *Records.* The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

§ 1–12.304 Variations and tolerances.

Variations and tolerances from the provisions of this subpart which are granted under section 105 of the Contract Work Hours Standards Act by the Secretary of Labor in the case of any contract work for which such variations and tolerances have been provided (29 CFR 5.14) shall be deemed to satisfy the requirements of § 1–1.009.

Subpart 1–12.4—Labor Standards in Construction Contracts

§ 1–12.400 Scope of subpart.

This subpart deals with labor standards for construction contracts as prescribed by the statutes and regulations set forth below.

§ 1–12.401 Statutory and regulatory requirements.

§ 1–12.401–1 Davis-Bacon Act.

The Davis-Bacon Act (Act of March 3, 1931, as amended; 40 U.S.C. 276a), provides that certain contracts over $2,000 entered into by any executive agency for construction, alteration, or repair (including painting and decorating) of public buildings or public works shall contain a provision (see § 1–12.403) to the effect that no laborer or mechanic employed directly upon the site of the work contemplated by the contract shall receive less than the prevailing rates of wages as determined by the Secretary of Labor.

§ 1–12.401–2 Copeland Act.

The Copeland ("Anti-kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force or otherwise, any person employed in the construction, prosecution, completion or repair of public buildings, public works, or buildings or works financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment. In accordance with regulations of the Secretary of Labor issued pursuant to the Copeland Act, certain contracts entered into by any executive agency shall contain a provision (see § 1–12.403) to the effect that the contractor and any subcontractor shall comply with the regulations of the Secretary of Labor under the Act.

§ 1–12.401–3 Contract Work Hours Standards Act.

See § 1–12.301.

§ 1–12.401–4 Department of Labor regulations.

Pursuant to the foregoing statutes and Reorganization Plan No. 14 of 1950 (3 CFR, 1949–1953 Comp., p. 1007), the Secretary of Labor has issued Regulations Parts 3 and 5, Title 29, Subtitle A, Code of Federal Regulations (29 F.R. 97), providing for the administration and enforcement of the foregoing statutes in construction contracts.

§ 1–12.402 Applicability.

The requirements of this Subpart 1–12.4 apply to contracts for construction, and, under some circumstances, to other types of contracts involving construction.

§ 1–12.402–1 Construction contracts.

(a) A contract is for construction if it is solely for construction, alteration, or repair (including painting and decorating) of a public building or public work. The appropriate clauses set forth in this Subpart 1–12.4 shall be included in such contracts. (Other types of contracts involving construction within the contemplation of this § 1–12.402 are described in § 1–12.402–2.)

(1) These requirements are applicable only if the construction work is, or reasonably can be foreseen to be, performed at a particular site, so that wage rates can be obtained for the locality (see § 1–12.404–2).

(2) These requirements are not applicable to contracts for the construction or repair of vessels, aircraft, or other kinds of personal property.

(3) These requirements are not applicable to contracts requiring construction work which is so closely related to research, experiment, and development that it cannot be performed separately, or which is itself the subject of research, experiment, or development.

(4) These requirements are applicable to the manufacture or fabrication of construction materials and components on the site by a construction contractor or subcontractor under a contract otherwise subject to these requirements, but are not applicable to manufacturing or furnishing of equipment, components, or other materials.

(b) Under such contracts for construction, the requirements apply only to work performed by mechanics and laborers at the site of the work.

(1) Mechanics and laborers are those working predominantly with their hands or with construction tools and equipment. The requirements do not apply to office workers, superintendents, technical engineers, or scientific workers, but they do apply to cooks, storekeepers, and working foremen. The requirements apply to mechanics and laborers whether they are employed by the prime contractor or by a subcontractor of any tier.

(2) The site of the work may include the sites of job headquarters, storage yards, prefabrication or assembly yards, quarries or borrow pits, batch plants, and similar facilities if they are set up for and serve exclusively the particular construction operation and are reasonably near the construction site. Transportation of materials, equipment, or personnel to and from the construction site by employees of construction contractors or subcontractors is covered by the requirements; however, such transportation by common carriers, material suppliers, or manufacturers is not subject to the requirements.

§ 1–12.402–2 Supply, service, maintenance, or other contracts involving construction.

(a) The requirements of this Subpart 1–12.4 do not ordinarily apply to supply, service, maintenance, research and development, or other nonconstruction contracts. However, contracts predominantly for nonconstruction work may also involve construction work. Construction items under such contracts are not exempted from the requirements of this subpart simply because the work is to be performed under a contract which also requires, for example, the furnishing of supplies. On the other hand, where construction work is to be performed in support of other work such as manufacturing and furnishing of supplies, the circumstances may be such that under the particular facts the construction work may be so merged with nonconstruction activity, or may be so fragmented in terms of the locations or time spans in which it is to be performed, that it cannot be segregated as a separate contractual requirement for construction, alteration, or repair of a public building or public work. Generally, the requirements apply to, and the appropriate clauses in § 1–12.403–1 must be included in, a prime contract if:

(1) The contract contains specific requirements for substantial amounts of construction work, or it is ascertainable at the contract date that a substantial amount of construction work will be necessary for the performance of the contract; and

(2) Such construction work is physically or functionally separate from, and, as a practical matter, is capable of being performed on a segregated basis from, the other work required by the contract. The word "substantial" relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract.

(b) The standard clauses provide that they will be applicable to the contract work only to the extent that such work is subject to the labor standards statutes involved. Under contracts requiring substantial amounts of segregable construction work, only such segregable construction will be covered.

(1) For example, the requirements do not apply to installation and maintenance work incidental to the furnishing of supplies under a supply contract; however, if a substantial and segregable amount of construction work at the site is required, such as for installation of heavy generators and large refrigerators or for plant modification or rearrangement, the labor standards for construction contracts apply to the construction work at the site.

(2) Contracts for maintenance or service are not ordinarily subject to the requirements. Maintenance includes the routine, recurring type of work necessary to keep a facility in such condition that it may be continuously used at an established capacity and efficiency for its intended purpose. However, if such maintenance or service contracts call for substantial and segregable items of construction, alteration, or repair, the labor standards provisions for construction contracts will be applicable to those items.

§ 1–12.403 Contract clauses.

§ 1.12.403–1 Clauses for general use.

Except as provided in § 1–12.403–3, every construction contract in excess of $2,000 for work within the United States shall include the following clauses:

(a) *Davis-Bacon Act (40 U.S.C. 276a-a(7))*.

DAVIS–BACON ACT (40 U.S.C. 276a–a(7))

(a) All mechanics and laborers employed or working directly upon the site of the work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor

which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified conformably to the wage determination decision, and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics to be used, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(c) In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (1) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(d) Paragraphs (a), (b) and (c) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

(b) *Contract Work Hours Standards Act—overtime compensation.*

CONTRACT WORK HOURS STANDARDS ACT—OVERTIME COMPENSATION—(40 U.S.C. 327–330)

(a) The Contractor shall not require or permit any laborer or mechanic in any workweek in which he is employed on any work under this contract to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) In the event of any violation of the provisions of paragraph (a), the Contractor shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraphs (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

(c) *Apprentices.*

APPRENTICES

(a) Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the aforesaid Bureau of Apprenticeship and Training. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered progam. Any employee listed on a payoll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed.

(b) The Contractor shall furnish written evidence of the registration of his program and apprentices as well as of the approriate ratio and wage rates, prior to using any apprentices in the contract work.

(d) *Payrolls and payroll records.*

PAYROLLS AND PAYROLL RECORDS

(a) The Contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

(b) The Contractor shall submit weekly a copy of all payrolls to the Contracting Officer. The Government Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of the "Weekly Statement of Compliance" required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) shall satisfy the requirement for submission of the above statement.

(c) The Contractor shall make his employment records available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

(e) *Compliance with Copeland Regulations.*

COMPLIANCE WITH COPELAND REGULATIONS

The Contractor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR Part 3) which are incorporated herein by reference.

(f) *Withholding of funds.*[1]

WITHHOLDING OF FUNDS

(a) The Contracting Officer may withhold or cause to be withheld from the Government Prime Contractor so much of the accrued payments or advances as may be considered necessary (1) to pay laborers and mechanics employed by the Contractor or any subcontractor on the work the full amount of wages required by the contract, and (2) to satisfy any liability of any Contractor for liquidated damages under paragraph (b) of the clause entitled "Contract Work Hours Standards Act—Overtime Compensation".

(b) If any Contractor fails to pay any laborer or mechanic employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Government Prime Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

(g) *Subcontracts.*[1]

SUBCONTRACTS

The Contractor agrees to insert the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours Standards Act—Overtime Compensation," "Apprentices," "Payrolls and Payroll Records," "Compliance with Copeland Regulations," "Withholding of Funds," "Subcontracts," and "Contract Termination—Debarment" in all subcontracts. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor."

(h) *Contract termination — debarment.*[1]

CONTRACT TERMINATION—DEBARMENT

A breach of the clauses hereof entitled "Davis-Bacon Act," "Contract Work Hours Standards Act—Overtime Compensation," "Apprentices," "Payrolls and Payroll Records," "Compliance with Copeland Regulations," "Withholding of Funds," and "Subcontracts" may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

§ 1–12.403–2 Overseas contracts.

Every construction contract in excess of $2,000 for work outside the United States but within any area over which the United States has jurisdiction as stated in § 1–12.302(a) shall include the clause set forth in §§ 1–12.303–1 or 1–12.303–2, as appropriate.

§ 1–12.403–3 Contracts with a State or political subdivision.

In the case of construction contracts in excess of $2,000 with a State or political subdivision thereof, the contract clauses required by § 1–12.403–1 shall be inserted and each clause shall be prefaced by the following provision:

The Contractor agrees to insert the following in all subcontracts hereunder with private persons or firms.

§ 1–12.404 Administration and enforcement.

§ 1–12.404–1 General.

The contracting officer shall ascertain that the contractor is fully informed of the labor standards provisions of the contract and of his responsibilities thereunder. Unless it is clear that the contractor is otherwise fully informed, the contractor shall be so informed either by conference or by letter as soon as possible after award of the contract. Whenever the clauses under § 1–12.403–1 are applicable, the action prescribed by this section shall be taken or required in accordance with procedures prescribed by each agency. Whenever the clauses under §§ 1–12.403–2 and 1–12.403–3 are applicable, the action prescribed by this section shall be taken or required, in accordance with procedures prescribed by each respective agency, to the extent pertinent to the applicable clauses.

[1] When Standard Form 19A is used, the clauses entitled "Withholding of Funds," "Subcontracts," and "Contract Termination—Debarment" therein shall be used in lieu of these clauses.

§ 1–12.404–2 Wage determinations.

Detailed instructions for requesting wage determinations for specific contracts and for requesting general wage determinations are contained in 29 CFR 5.3 (29 F.R. 100). The substance of such instructions is set forth in this § 1–12.404–2.

(a) *Requests for wage determinations for specific contracts.* Requests shall be submitted to the Solicitor of Labor, Department of Labor, Washington, D.C. 20210, on Department of Labor Form DB–11. Only those classifications shall be checked on the form which will be needed in the performance of the work. Needed classifications not on the form may be added. Requests shall:

(1) Include a sufficiently detailed description of the work to indicate the type of construction involved, i.e., heavy, highway, building, or other type.

(2) Include the location of the project, giving the distance in miles and the direction from the nearest point of reference.

(3) Include the agency's evaluation as to whether the project is a building, heavy, highway, or other type of construction project.

(4) Be accompanied by any available pertinent wage payment information, unless the wage patterns in the areas are clearly established.

(b) *Requests for general wage determinations.* Agencies may request a general wage determination for use on individual contracts for a particular type of construction in a particular area whenever (1) the wage patterns in such area for the particular type of construction are well settled, and (2) the agency anticipates a large volume of the particular type of construction in the area.

(c) *Time of submission of requests.* Requests for wage determinations should ordinarily be submitted at least 30 calendar days before they are required for advertising for bids for, or negotiation of, the contract for which the determinations are sought.

(d) *Limitations.* Each wage determination is effective for 120 calendar days from the date of the determination, and is void if no contract award is made within that period. Accordingly, if it appears that a wage determination will expire before a contract can be awarded, a new determination should be requested at a date which will permit its receipt and issuance to prospective bidders by amendment of the invitation for bids before the date set for bid opening. In individual cases, upon a written finding by the head of the agency, that due to unavoidable circumstances a wage determination expired after bid opening but before award, the Solicitor of Labor may extend the period of effectiveness of the wage determination whenever he finds it necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Government business.

(e) *Modifications.* Modifications by the Secretary of Labor of an original wage determination shall be made part of the proposed contract if received prior to the award of the contract; provided that, in procurement by formal advertising or by small business restricted advertising, any modification received by the executive agency concerned less than 10 calendar days before the opening of bids may be disregarded. Copies of modifications received by an agency should be time-date stamped to show the date of receipt by the agency.

(f) *Posting.* The contracting officer shall ascertain that a copy of the wage determination is kept posted at the site of the work in a prominent place where it can be easily seen by the workers.

§ 1–12.404–3 Additional classifications.

As provided in paragraph (b) of the clause set forth in § 1–12.403–1(a), the contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination forming a part of the contract, and which is to be employed on the contract work, shall be classified or reclassified conformably to such wage determination, and shall report the action taken to the Secretary of Labor. In the event of disagreement among the interested parties as to the proper classification or reclassification, the contracting officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

§ 1–12.404–4 Apprentices.

As provided in paragraph (b) of the clause set forth in § 1–12.403–1(c), the contractor or subcontractor is required to furnish written evidence of registration of his program and apprentices, as well as of the appropriate ratio and wage rates, before using any apprentices on the contract work.

§ 1–12.404–5 Subcontracts.

The contracting officer shall obtain a list of all subcontracts, together with a description of the work to be performed thereunder. This list will be useful in obtaining compliance with the requirement for submission of payrolls by the contractor and subcontractors.

§ 1–12.404–6 Payrolls and statements.

(a) *Submission.* Within 7 calendar days after the regular payment date of the payroll week covered, the contractor is required to submit, or cause to be submitted for himself and his subcontractors, (1) copies of weekly payrolls in compliance with the clause set forth in § 1–12.403–1(d) and (2) weekly statements of compliance as required by the Copeland Regulations incorporated in the contract by the clause set forth in § 1–12.403–1(e). (For form of weekly statement of compliance, see 29 CFR 3.3.)

(b) *Examination.* The executive agency concerned shall make such examination of the payrolls and statements as may be necessary to assure compliance with contract, statutory, and regulatory requirements. Particular attention should be given to the correctness of classifications and disproportionate employment of laborers, helpers or apprentices.

(c) *Preservation.* Payrolls and statements shall be preserved by the executive agency concerned for a period of 3 years from the date of completion of the contract and shall be produced at the request of the Secretary of Labor at any time during such period.

§ 1–12.404–7 Investigations.

(a) The executive agency concerned shall make such investigations as may be necessary to assure compliance with contract, statutory, and regulatory requirements. Contracts of 6 months or less duration shall be investigated before final payment is made, if feasible. Contracts of longer duration shall be investigated with such frequency as may be necessary to assure compliance. Such investigations shall include interviews of employees on a sampling basis.

(b) Special investigations in detail shall be made when required by complaints or other evidence of violations. Complaints of violations shall be given priority.

(c) Statements, written or oral, made by an employee shall be treated as confidential and shall not be disclosed to the employer without the consent of the employee.

§ 1–12.404–8 Reports of violations.

(a) Enforcement reports.

(1) Where underpayments total less than $500.00, are nonwilful, restitution has been effected and future compliance assured, no report need be made to the Department of Labor except where the investigation was requested by that Department. In those cases, the agency shall submit a factual summary report in accordance with 29 CFR 5.7(a)(1).

(2) Where underpayments total $500.00 or more, or are willful, the agency shall furnish to the Department of Labor, as soon as practicable, a detailed enforcement report. Such reports shall include a statement of the findings as to the violations and information as to restitution made, payment deductions, contract terminations, and the names and addresses of the workers, contractors and subcontractors concerned.

(3) Where there is substantial evidence that violations are willful and in breach of the False Affidavits Act (18 U.S.C. 1001) or other criminal statute, the matter shall be forwarded to the Attorney General for prosecution and the Secretary of Labor shall be informed of such action.

(b) Semi-annual enforcement reports. Each agency shall furnish to the Secretary of Labor, by July 15 and January 15 of each year, a report on compliance with an enforcement of the labor standards provisions for the period January 1 through June 30 and July 1 through December 31, respectively. Such reports should include the number of employee interviews conducted, the amount of restitution effected, the number of workers who received such restitution, any liquidated damages assessed, other corrective measures taken, and other pertinent data.

§ 1–12.404–9 Suspensions and deductions of contract payments.

In the event of failure or refusal by the contractor or any subcontractor to pay all or any part of the wages due workers, the contracting officer may suspend further contract payments to the contractor in amounts equal to such unpaid wages and liquidated damages

which may be due until either restitution has been made directly by the contractor or subcontractor concerned or deductions against payment vouchers are made as provided in this § 1–12.404–9. If such failure or refusal appears continuing and willful, or in the event of any other failure or refusal to comply with contract, statutory, and regulatory requirements, the contracting officer may suspend all future contract payments to the contractor until such violations have ceased. If restitution is not made directly by the contractor or subcontractor within a reasonable time, or, in any event, prior to final payment under the contract, the contracting officer shall submit with the contractor's payment voucher or vouchers a Schedule of Withholdings Under the Davis-Bacon Act, Standard Form 1093, and a statement of the amounts to be withheld for under payment of wages and liquidated damages pursuant to the Contract Work Hours Standards Act. These amounts shall be deducted from the payments made to the contractor and shall be disposed of in accordance with agency procedures.

§ 1–12.404–10 Restitution.

Restitution of amounts due workers may be permitted at any time at the volition of the contractor or subcontractor and may be ordered by the agency concerned whenever wage underpayments are found to be nonwillful.

§ 1–12.404–11 Contract terminations.

Whenever a contract is terminated for violation of the labor standards provisions, a report shall be submitted by the agency concerned to the Secretary of Labor and the Comptroller General. The report shall include the name and address of the terminated contractor or subcontractor, the name and address of the contractor or subcontractor who is to complete the work, the amount and number of the latter's contract, and a description of the work thereunder.

§ 1–12.404–12 Cooperation with Department of Labor.

The executive agency concerned shall cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers and all other aspects of investigations undertaken by the Department of Labor. When requested, the executive agencies shall furnish to the Secretary of Labor any available information with respect to contractors, subcontractors, their contracts and the nature of the contract work.

§ 1–12.404–13 Review of recommendations for an appropriate adjustment in liquidated damages under the Contract Work-Hours Standards Act.

Whenever the head of an agency finds that a sum of liquidated damages administratively determined to be due under section 104(a) of the Contract Work Hours Standards Act is incorrect or that the contractor or subcontractor violated inadvertently the provisions of the Contract Work Hours Standards Act notwithstanding the exercise of due care upon the part of the contractor or subcontractor involved, he may (a) make an appropriate adjustment in, or release the contractor or subcontractor of liability for, such liquidated damages where the amount of the damages is $100 or less, or (b) make recommendations for adjustment or relief to the Secretary of Labor where the amount of the damages is in excess of $100, as provided in 29 CFR 5.8.

Subpart 1–12.5 [Reserved]

Subpart 1–12.6—Walsh-Healey Public Contracts Act

§ 1–12.601 Statutory requirement.

In accordance with the requirement of the Walsh-Healey Public Contracts Act (41 U.S.C. 35–45), all contracts subject to said Act entered into by any executive agency for the manufacture or furnishing of supplies in any amount exceeding $10,000 (a) will be with manufacturers or regular dealers, and (b) shall incorporate by reference the representations and stipulations required by said Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

§ 1–12.602 Applicability.

§ 1–12.602–1 General.

The requirement set forth in § 1–12.601 applies to contracts for the manufacture or furnishing of "materials, supplies, articles, and equipment" which are to be performed within the United States, Puerto Rico, or the Virgin Islands, and which exceed or may exceed $10,000 in amount unless exempt pursuant to § 1–12.602–2 or exempted by the Secretary of Labor (see § 1–12.602–3(a)).

§ 1–12.602–2 Statutory exemptions.

(a) The following transactions are exempt from the Walsh-Healey Public Contracts Act:

(1) Purchases of generally available commercial items, negotiated pursuant to the authority set forth in § 1–3.202 or pursuant to similar authority under other laws;

(2) Purchases of perishables including dairy, livestock, and nursery products;

(3) Purchases of agricultural or farm products processed for first sale by the original producers; and

(4) Purchases of agricultural commodities or the products thereof made by the Secretary of Agriculture under the Agricultural Adjustment Act program or for purposes within the general scope and aim of that program, such as stabilization and increase of market prices to farmers.

(b) Contracting officers are cautioned to refer to the Department of Labor regulations and interpretations (see § 1–12.602–3(a)) in order to ascertain the applicability of the exemptions.

§ 1–12.602–3 Department of Labor regulations and interpretations.

(a) Pursuant to the Walsh-Healey Public Contracts Act, the Secretary of Labor has issued detailed regulations and interpretations as to the coverage of said Act, and exemptions and procedures thereunder. The regulations are issued in the Code of Federal Regulations, Title 41, Chapter 50. The interpretations are compiled in a document entitled "Walsh-Healey Public Contracts Act, Rulings and Interpretations."

(b) Attention is directed to the following which give the substance of certain Department of Labor opinions:

(1) Contracts which are originally $10,000 or less, but are subsequently modified to increase the price to an amount in excess of $10,000, are subject to the Walsh-Healey Public Contracts Act after date of such modification; and contracts in an amount exceeding $10,000, which are subsequently modified to a figure of $10,000 or less, are not subject to said Act with respect to work performed after such modification, if modification is effected by mutual agreement. (Opinion of August 9, 1944).

(2) When a contract awarded to a primary contractor contains a provision making him an agent of the Government, the primary contractor is required to include the stipulations of the Walsh-Healey Public Contracts Act in contracts he awards for and on behalf of the Government for materials, supplies, articles, or equipment in excess of $10,000 to be used in the construction and equipment of Government facilities. (Opinion of September 6, 1941).

(3) The stipulations of the Walsh-Healey Public Contracts Act, incorporated into and made a part of Government contracts for the manufacture and furnishing of materials, supplies, articles, or equipment, awarded to persons or companies operating Government-owned facilities, affect the employees of such contractors in the same manner and to the same extent as those affecting employees of contractors operating privately-owned facilities. (Opinion of August 21, 1942).

§ 1–12.603 Determinations of eligibility as manufacturer or regular dealer.

§ 1–12.603–1 Manufacturer.

As used in § 1–12.601 a manufacturer is a person who owns, operates, or main-

tains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. In order to qualify as a manufacturer, a bidder must be able to show before the award (a) that he is an established manufacturer of the particular goods or goods of the general character sought by the Government, or (b) if he is newly entering into such manufacturing activity, that he has made all necessary prior arrangements for space, equipment, and personnel to perform the manufacturing operations required for the fulfillment of the contract. A new firm which, prior to the award of the contract, has made such definite commitments in order to enter a manufacturing business which will later qualify it, shall not be barred from receiving the award because it has not yet done any manufacturing; however, this interpretation is not intended to qualify a firm whose arrangements to use space, equipment, or personnel are contingent upon the award of a Government contract.

§ 1–12.603–2 Regular dealer.

(a) Except as set forth in paragraph (b) of this § 1–12.603–2, as used in § 1–12.601 a regular dealer is a person who owns, operates, or maintains a store, warehouse, or other establishment in which materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business. In order to qualify as a regular dealer, a bidder must be able to show before the award:

(1) That he has an establishment or leased or assigned space in which he regularly maintains a stock of goods in which he claims to be a dealer; if the space is in a public warehouse, it must be maintained on a continuing, and not on a demand, basis;

(2) That the stock maintained is a true inventory from which sales are made; the requirement is not satisfied by a stock of sample or display goods, or by a stock consisting of surplus goods remaining from prior orders, or by a stock unrelated to the supplies which are the subject of the bid, or by a stock maintained primarily for the purpose of token compliance with the Act from which few, if any, sales are made;

(3) That the goods stocked are of the same general character as the goods to be supplied under the contract; to be of the same general character the items to be supplied must be either identical with those in stock or be goods for which dealers in the same line of business would be an obvious source;

(4) That sales are made regularly from stock on a recurring basis; they cannot be only occasional and constitute an exception to the usual operations of the business; the proportion of sales from stock that will satisfy the requirements will depend upon the character of the business;

(5) That sales are made regularly in the usual course of business to the public, i.e., to purchasers other than Federal, State, or local government agencies; this requirement is not satisfied if the contractor merely seeks to sell to the public but has not yet made such sales; if government agencies are the sole purchasers, the bidder will not qualify as a regular dealer; the number and amount of sales which must be made to the public will necessarily vary with the amount of total sales and the nature of the business; and

(6) That his business is an established and going concern; it is not sufficient to show that arrangements have been made to set up such a business.

(b) For certain specific products, there are alternative definitions of regular dealers. The qualifications required under the alternative definitions are listed in the regulations of the Secretary of Labor (41 CFR 50–201.101(b)).

§ 1–12.603–3 Coal dealers.

Coal dealers are exempted from the regular dealer requirements if they meet the terms and conditions set forth by the Secretary of Labor in his regulations (41 CFR 50–201.604(a)). If these terms and conditions are not met, coal dealers must meet the requirements set forth in § 1–12.603–2 in order to be considered regular dealers.

§ 1–12.603–4 Agents.

A manufacturer or regular dealer may bid, negotiate, and contract through an authorized agent if the agency is disclosed, and the agent acts and contracts in the name of his principal. In this connection, see the clause entitled "Covenant Against Contingent Fees" set forth in § 1–1.503 and the procedures prescribed for obtaining information concerning contingent fees, as set forth in Subpart 1–1.5.

§ 1–12.604 Responsibilities of contracting officers.

The responsibility for applying the eligibility requirements set forth in § 1–12.601 rests, in the first instance, with the contracting officer. The Department of Labor does not conduct pre-award investigations, nor render final determinations of eligibility until the contracting officer has initially determined whether the eligibility requirements have been met. When the eligibility of a bidder or offeror is challenged before award, it should be treated in a manner similar to a protest before award (see § 1–2.407–8). The contracting officer should make an initial determination and should process the protest in accordance with agency procedures for submission to the Department of Labor for a final determination. Whenever the Walsh-Healey Public Contracts Act is applicable, the contracting officer shall, pursuant to regulations or instructions issued by the Secretary of Labor and in accordance with procedures prescribed by each respective executive agency:

(a) Inform prospective contractors of the applicability of minimum wage determinations;

(b) Furnish to the contractor a poster (Form PC–13);

(c) Furnish to the contractor a form letter (Form WH–12) explaining application of the Walsh-Healey Public Contracts Act and giving instructions for display of the poster;

(d) Prepare and transmit to the Department of Labor a Notice of Award of Contract (Standard Form 99) immediately on award of the contract; and

(e) Report to the Department of Labor any violation of the representations or stipulations required by the Walsh-Healey Public Contracts Act.

§ 1–12.605 Contract clause.

The following clause shall be used as required by this Subpart 1–12.6:

WALSH-HEALEY PUBLIC CONTRACTS ACT

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

Subpart 1-12.7—Fair Labor Standards Act of 1938

§ 1-12.701 Basic statute.

The Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-219), provides for the establishment of minimum wage and maximum hour standards, creates a Wage and Hour Division in the Department of Labor for purposes of interpretation and enforcement (including investigation and inspection of Goverment contractors), and prohibits oppressive child labor. Said Act applies to all employees, unless otherwise exempted, who are engaged in (a) interstate commerce or foreign commerce, (b) the production of goods for such commerce, or (c) any closely related process or occupation essential to such production.

§ 1-12.702 Rulings on applicability or interpretation.

Contractors or contractor employees who inquire concerning applicability or interpretation of the Fair Labor Standards Act shall be advised that rulings concerning such matters fall within the jurisdiction of the Department of Labor, and shall be given the address of the appropriate regional office of the Wage and Hour and Public Contracts Divisions of the Department of Labor.

Subpart 1-12.8—Equal Opportunity in Employment

§ 1-12.800 Scope of subpart.

This subpart sets forth policies and procedures for carrying out the requirements of Executive Order No. 10925 of March 6, 1961 (3 CFR 1961 Supp.), Executive Order No. 11114 of June 22, 1963 (28 F.R. 6485), and the rules and regulations of the President's Committee on Equal Employment Opportunity, July 22, 1961 (41 CFR 60-1), as amended December 14, 1961 (26 F.R. 11974), November 24, 1962 (27 F.R. 11551), June 11, 1963 (28 F.R. 5671), September 7, 1963 (28 F.R. 9812), and October 23, 1963 (28 F.R. 11305), with respect to equal opportunity in employment.

§ 1-12.801 Policy.

Executive Orders Nos. 10925 and 11114 state that discrimination because of race, creed, color, or national origin is contrary to the Constitutional principles and policies of the United States, and that it is the plain and positive obligation of the U.S. Government to promote and insure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed by or seeking employment with Government contractors and contractors performing contracts for construction financed with assistance from the Federal Government. To carry out this policy, the President's Committee on Equal Employment Opportunity was created by Executive Order No. 10925 to provide regulations, guidelines, and instructions to Government agencies. The head of each agency (see § 1-12.802(b)) was made primarily responsible for obtaining compliance by any contractor or subcontractor with the provisions of the Executive orders and the rules, regulations, and orders of the President's Committee. Although initial emphasis for obtaining compliance should be placed upon methods of conference, conciliation, mediation, and persuasion, if such measures do not succeed in obtaining the necessary degree of progress, consideration will be given to invoking the appropriate sanctions as set forth in § 1-12.805-8.

§ 1-12.802 Definitions.

As used in this subpart, the following terms have the meanings stated:

(a) "Administering agency" means any department (including the Departments of the Army, Navy, and the Air Force), agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which administers a program involving Federally assisted construction contracts.

(b) "Agency" means any contracting or any administering agency.

(c) "Applicant" means an applicant for Federal assistance or, as determined by regulation of an administering agency, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee, or change therein, is not finallly acted upon prior to July 22, 1963, and it includes such an applicant after becoming a recipient of such Federal assistance.

(d) "Chairman" means the Chairman of the Committee.

(e) "Committee" means the President's Committee on Equal Employment Opportunity.

(f) "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including, without limitation, facilities providing utility services.

(g) "Contract" means any Government contract or any federally assisted construction contract.

(h) "Contracting agency" means any department (including the Departments of the Army, Navy, and Air Force), agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which enters into contracts.

(i) "Equal opportunity clause" means the contract provisions of section 301 of the order.

(j) "Executive Vice Chairman" means the Executive Vice Chairman of the Committee.

(k) "Federally assisted construction contract" means any binding legal agreement or modification thereof between an applicant and a contractor for construction work which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any

Federal program involving such grant, contract, loan, insurance, or guarantee; or any approved application or modification for a grant, contract, loan, insurance, or guarantee under which the applicant itself performs construction work other than through the permanent work force directly employed by an agency of Government.

(l) "Government contract" means any binding legal agreement or modification thereof between the Government and a Contractor for supplies or services, including construction, or for the use of Government property in which the parties, respectively, do not stand in the relationship of employer and employee.

(m) "Modification" means any written alteration in the terms and conditions of a contract accomplished by bilateral action of the parties to the contract, including supplemental agreements and amendments.

(n) "Order" means Executive Order No. 10925 of March 6, 1961 (26 F.R. 1977), as amended by Parts II and III of Executive Order No. 11114 of June 22, 1963 (28 F.R. 6485).

(o) "Orders" means those parts of Executive Order No. 10925 of March 6, 1961, relating to Government contracts and Executive Order No. 11114 of June 22, 1963.

(p) "Prime contractor" means any person holding a contract.

(q) "Rules, regulations, and relevant orders" of the Committee as used in paragraph d of the Equal Opportunity clause means rules, regulations, and relevant orders issued pursuant to Executive Orders Nos. 10925 and 11114 and in effect at the time the particular contract subject to such orders was entered into.

(r) "Site of construction" means the physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair and any temporary location or facility established by a contractor or subcontractor specifically to meet the demands of his contract or subcontract.

(s) "Standard commercial supplies" means an article:

(1) Which in the normal course of business is customarily maintained in stock by the manufacturer or any dealer, distributor, or other commercial dealer for the marketing of such article; or

(2) Which is manufactured and sold by two or more persons for general commercial or industrial use or which is identical in every material respect with an article so manufactured and sold.

(t) "Subcontract" means any agreement made or purchase order executed by a prime contractor or a subcontractor where a material part of the supplies or services covered by such agreement or purchase order is being obtained for use in the performance of a contract.

(u) "Subcontractor" means any person holding a subcontract. "First-tier subcontractor" refers to a subcontractor holding a subcontract with a prime contractor. "Second-tier subcontractor refers to a subcontractor holding a subcontract with a first-tier subcontractor.

(v) "United States" as used herein shall include the Commonwealth of Puerto Rico, the Panama Canal Zone and the Possessions of the United States.

(w) "Vice Chairman" means the Vice Chairman of the Committee.

§ 1–12.803 Basic requirements.

§ 1–12.803–1 Government contracts.

Each contracting agency shall include the Equal Opportunity clause in each of its Government contracts (including modifications thereof) which is not exempt from the requirements of the clause. Government bills of lading may incorporate by reference the Equal Opportunity clause.

§ 1–12.803–2 Equal Opportunity clause.

EQUAL OPPORTUNITY

(The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity (41 CFR, ch. 60). Exemptions include contracts and subcontracts (i) not exceeding $10,000, (ii) not exceeding $100,000 for standard commercial supplies or raw materials, and (iii) under which work is performed outside the United States and no recruitment of workers within the United States is involved.)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under this nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor.[1] The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

§ 1–12.803–3 Federally assisted construction contracts.

(a) Each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving a federally assisted construction contract which is not exempt from the requirements of the Equal Opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the rules and regulations of the President's Committee on Equal Employment Opportunity, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following Equal Opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation;

[1] Unless otherwise provided, the "Equal Opportunity" clause is not required to be inserted in subcontracts below the second tier except for subcontracts involving the performance of "construction work" at the "site of construction" (as those terms are defined in the Committee's rules and regulations) in which case the clause must be inserted in all such subcontracts. Subcontracts may incorporate by reference the "Equal Opportunity" clause.

and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers, with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended by Executive Order No. 11114 of June 22, 1963, and of the rules, regulations and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended by Executive Order No. 11114 of June 22, 1963, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, as amended by Executive Order No. 11114 of June 22, 1963, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, as amended by Executive Order No. 11114 of June 22, 1963, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however,* That in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United Sates.

The applicant further agrees that it will be bound by the above Equal Opportunity clause in any federally assisted construction work which it performs itself other than through the permanent work force directly employed by an agency of Government.

The applicant agrees that it will cooperate actively with the administering agency and the President's Committee on Equal Employment Opportunity in obtaining the compliance of Contractors and subcontractors with the Equal Opportunity clause and the rules, regulations, and relevant orders of the Committee, that it will furnish the administering agency and the Committee such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order No. 11114 with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to Part III, Subpart D of Executive Order No. 10925 and will carry out such sanctions and penalties for violation of the Equal Opportunity clause as may be imposed upon Contractors and subcontractors by the administering agency or the Committee pursuant to Part III, Subpart D of Executive Order No. 10925. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings the administering agency may cancel, terminate, or suspend in whole or in part this grant [contract, loan, insurance, guarantee], may refrain from extending any further assistance under any of its programs subject to Executive Order No. 11114 until satisfactory assurance of future compliance has been received from such applicant, or may refer the case to the Department of Justice for appropriate legal proceedings.

(End of clause)

(b) In any case in which the administering agency makes a determination that inclusion of the language prescribed in paragraph (a) of this § 1–12.803–3 for applicants would be inconsistent with law, the agency shall notify the Executive Vice Chairman of the determination and the reasons therefor. The Executive Vice Chairman shall request a ruling from the Attorney General regarding such determination and shall report thereon to the Committee.

§ 1–12.803–4 Prime contractors and subcontractors.

Each nonexempt prime contractor and subcontractor shall include the Equal Opportunity clause in each of their nonexempt subcontracts, provided that except upon special order of the contracting agency or the Executive Vice Chairman, and except in subcontracts for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier. Subcontracts may incorporate by reference the Equal Opportunity clause.

§ 1–12.803–5 Adaptation of language.

Such necessary changes in language may be made in the Equal Opportunity clause, and in the language of the condition required by § 1–12.803–3(a), as shall be appropriate to identify properly the parties and their undertakings.

§ 1–12.804 Exemptions.

§ 1–12.804–1 General.

Contracts and subcontracts are exempt from the requirements of the Equal Opportunity clause as provided in this section.

(a) *Transactions of $10,000 or under.* Contracts and subcontracts not exceeding $10,000, other than Government bills of lading, are exempt. In determining the applicability of this exemption to any federally assisted construction contract, or subcontract thereunder, the amount of such contract or subcontract rather than the amount of the Federal financial assistance shall govern.

(b) *Standard commercial supplies and raw materials.* Contracts and subcontracts not exceeding $100,000 for standard commercial supplies or raw materials are exempt, except that the Executive Vice Chairman may, whenever he finds it necessary or appropriate to achieve the purposes of the orders, withdraw such exemption in whole or in part with regard to any specified articles or raw materials. No agency, contractor, or subcontractor shall procure supplies or materials in less than usual quantities to avoid applicability of the Equal Opportunity clause.

(c) *Contracts outside the United States.* Contracts and subcontracts under which work is to be or has been performed outside the United States and where no recruitment of workers within the United States is involved are exempt. To the extent that work pursuant to such contracts is done within the United States the Equal Opportunity clause shall be applicable.

(d) *Sales contracts.* Contracts providing for the sale of Government real and personal property where no appreciable amount of work is involved are exempt.

(e) *Contracts and subcontracts for an indefinite quantity.* (1) Contracts and subcontracts for an indefinite quantity (including, without limitation, open-end contracts, requirement-type contracts, Federal Supply Schedule contracts, "call-type" contracts, and purchase notice agreements) which are not to extend for more than one year are exempt from the requirements of the Equal Opportunity clause if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed $100,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or $10,000 in the case of all other contracts and subcontracts. When not so determined to be exempt from the requirements of the Equal Opportunity clause, such contracts or subcontracts shall be subject to those requirements even though the amounts actually ordered do not exceed the appropriate dollar limitation.

(2) With respect to contracts or subcontracts for an indefinite quantity which are to extend for more than one year or continue indefinitely, the Equal Opportunity clause shall be included unless the purchaser knows in advance that the amounts to be ordered in any year under such contract or subcontract will not exceed the appropriate dollar limitation. When so included in any contract the applicability of the Equal Opportunity clause shall be determined by the purchaser at the time of award for the first year, and at the end of each year for the succeeding year, based upon the amounts that are reasonably expected to be ordered during such year, and the purchaser shall notify the con-

tractor or subcontractor in writing when the Equal Opportunity clause is so determined to be applicable. Once the Equal Opportunity clause is determined to be applicable, the contract or subcontract shall continue for its duration to be subject to such clause, regardless of the amounts ordered, or reasonably expected to be ordered, in any succeeding year.

(3) Whenever it has been determined in accordance with the provisions of this § 1–12.804–1(e) that a contract or subcontract for an indefinite quantity is exempt from the requirements of the clause, or that such requirements are not to be applicable in any one year, such determination shall be controlling even though the amounts actually ordered exceed the appropriate dollar limitation.

§ 1–12.804–2 Specific contracts.

The Executive Vice Chairman may, with the approval of the Vice Chairman, exempt an agency from requiring the inclusion of any or all of the Equal Opportunity clause in any specific contract, or subcontract, when he deems that special circumstances in the national interest so require. The Executive Vice Chairman may also, with the approval of the Vice Chairman, exempt groups or categories of contracts of the same type where he finds it impracticable to act upon each request individually or where group exemptions will contribute to convenience in the administration of the orders.

§ 1–12.804–3 Facilities not connected with contracts.

The Executive Vice Chairman may, with the approval of the Vice Chairman, exempt from the requirements of the Equal Opportunity clause any of a contractor's or subcontractor's facilities which he finds to be in all respects separate and distinct from activities of the contractor related to the performance of the contract, provided that he also finds that such an exemption will not interfere with or impede the effectuation of the orders.

§ 1–12.804–4 Effect of exemption.

Notwithstanding the inclusion in any contract or subcontract of the Equal Opportunity clause, the contractor or subcontractor shall be exempt from compliance therewith if the contract or subcontract containing such a clause is exempt.

§ 1–12.804–5 Withdrawal of exemption.

When any contract or subcontract is of a class exempted under this section, the Executive Vice Chairman may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when in his judgment such action is necessary or appropriate to achieve the purposes of the orders. Such withdrawal shall not apply to any contracts or subcontracts entered into prior to the effective date of the withdrawal.

§ 1–12.805 Administration.

§ 1–12.805–1 Duties of agencies.

(a) The head of the agency shall be primarily responsible for obtaining compliance with the Equal Opportunity clause set forth in § 1–12.803–2, the orders, and the rules, regulations, and orders of the President's Committee. Each agency shall furnish the Committee such information and assistance as it may require in the performance of its functions under the orders.

(b) The head of each agency shall appoint from among its personnel a Contracts Compliance Officer, who shall be subject to the immediate supervision of the head of the agency for carrying out the responsibilities of the agency under this subpart. The head of the agency or the Contracts Compliance Officer may also designate, when appropriate, Deputy Contracts Compliance Officers to assist the Contracts Compliance Officer in the performance of his duties. The name of each Contracts Compliance Officer and any Deputy Contracts Compliance Officers, their addresses, telephone numbers, and any changes made in their designation shall be furnished to the Executive Vice Chairman.

(c) Agency implementation and supplementation of and deviations from this subpart shall be submitted to the Executive Vice Chairman for prior review and approval. Deviations from this subpart which are approved by the Executive Vice Chairman will be deemed to satisfy the requirements of § 1–1.009. However, where requests for deviations from this subpart also involve deviations from the rules and regulations of the President's Committee, approval by the Committee is required.

§ 1–12.805–2 Educational responsibility.

(a) Contracting officers and other personnel concerned with procurement shall be apprised of their responsibilities for obtaining compliance with the Equal Opportunity clause.

(b) The agency shall publicize the equal opportunity policy to prospective bidders and contractors, and shall make available to contractors information concerning their responsibilities under the clause.

§ 1–12.805–3 Posting of notices.

(a) *General.* The Committee has prescribed a standard notice entitled "Equal Employment Opportunity" and Standard Form 38, Notice to Labor Unions or Other Organizations of Workers, to be used in effecting compliance with the equal opportunity policy. The notices are to be acquired, distributed, and used in accordance with this section.

(b) *Requirements for use.* (1) Except as otherwise provided in this section, a sufficient quantity of the prescribed notices shall be furnished to prime contractors to satisfy their requirements.

(2) The notices shall be furnished with the notification of award and, at the same time, the contractor shall be advised that:

(i) He is required to furnish the notices to his subcontractors;

(ii) The notices must be posted in all employment offices, on bulletin boards, and other conspicuous places available to employees and applicants for employment;

(iii) The notices must be similarly displayed by subcontractors;

(iv) He is required to complete, sign, and furnish the notice (Standard Form 38) to each labor union or organization of workers with which has a collective bargaining argreement or other contract or understanding;

(v) His subcontractors are also required to execute and furnish the notice (Standard Form 38) to each labor union or organization of workers with which they have a collective bargaining agreement or other contract or understanding; and

(vi) Additional supplies of the posters and notices will be supplied upon request.

(c) *Exceptions.* The notices need not be furnished nor used where the contract, subcontract, or purchase order is exempt from the provisions of the Equal Opportunity clause set forth in § 1–12.803–2.

(d) *Acquisition of notices.* The notices with respect to equal opportunity are available in all GSA Stores Depots. Applicants may obtain such notices through the administering agency. The stock numbers of these items are as follows:

Stock number	*Description*
7530–338–5437	Notice—"Equal Employment Opportunity" 12½" x 18¼".
7530–338–5448	Notice—"Equal Employment Opportunity" 8½" x 12".
7540–823–7871	Standard Form 38—Notice to labor unions or other organizations of workers.

§ 1–12.805–4 Compliance reports.

(a) The agency shall require each nonexempt contractor to file, and each nonexempt contractor and subcontractor shall cause their nonexempt subcontractors to file, timely, complete, and accurate compliance reports in accordance with and to the extent required by the instructions attached to the official Compliance Report forms as well as to furnish such other pertinent information as may be requested by the agency, the applicant, or the Executive Vice Chairman. Compliance reports shall be filed at the times specified by the instructions attached to such forms or at such other times as may be required by the agency or the Executive Vice Chairman.

(b) Standard Form 40 (see illustration in § 1–16.901–40) is to be filed with the Committee where supplies or services (other than construction or utility) are involved and Standard Form 41 (see illustration in § 1–16.901–41) is to be filed with the agency where a construction contractor or subcontractor is performing work at the site of construction. Similarly, first-tier subcontractors and subcontractors below the first tier shall cause their subcontractors that are performing work at the site of construction to file compliance reports required by the instructions attached to Standard Form 41.

(c) The contracting officer shall furnish the contractor a sufficient number

of report forms to satisfy the requirement of § 1–12.805–4(a).

(d) The agency, with the approval of the Executive Vice Chairman, may, in appropriate cases, extend the time for filing compliance reports. Requests by contractors or subcontractors for such an extension should be directed to the contracting officer for forwarding to the Executive Vice Chairman in accordance with agency procedures.

(e) The agency shall require any bidder or prospective contractor, or any of their proposed subcontractors, to state as an initial part of the bid or negotiations of the contract whether it has participated in any previous contract or subcontract subject to the Equal Opportunity clause; and, if so, whether it has filed all required compliance reports. The statement shall be in the form of a representation by the bidder or offeror substantially as follows:

The bidder (or offeror) represents that he [ ] has, [ ] has not, participated in a previous contract or subcontract subject to either the Equal Opportunity clause herein or the clause originally contained in section 301 of Executive Order 10925; that he [ ] has, [ ] has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)

(f) In any case in which a bidder or prospective contractor or proposed subcontractor which has participated in a previous contract or subcontract subject to the Equal Opportunity clause has not filed a required compliance report, the agency shall require submission thereof prior to the award of the proposed contract or subcontract. In all other cases, the agency may, or upon the direction of the Executive Vice Chairman, shall, require the submission of a compliance report by any bidder or prospective contractor or subcontractor prior to the award of the proposed contract or subcontract. When a determination has been made to award a contract to a specific contractor, such contractor may be required, prior to award, to furnish such other pertinent information regarding its own employment policies and practices as well as of its subcontractors as the agency, the applicant, or the Executive Vice Chairman may require.

(g) Failure to file timely, complete, and accurate compliance reports as required constitutes noncompliance with the contractor's obligations under the Equal Opportunity clause and is ground for the imposition by the agency or the Committee of any of the sanctions available under the orders.

(h) Each agency may as a part of the bid or negotiation of the contract, or upon the direction of the Executive Vice Chairman, shall, direct any bidder or prospective contractor, or any of their proposed subcontractors, to file a statement in writing (signed by an authorized officer or agent of any labor union or other workers' representative with which the bidder or prospective contractor or subcontractor, deals or has reason to believe he will deal in connection with performance of the proposed contract), together with supporting information, to the effect that the said labor union's or other workers' representative's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the labor union or other workers' representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of the orders or that it consents and agrees that recruitment, employment and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the orders. In the event the union or other workers' representative fails or refuses to execute such a statement, the bidder or prospective contractor shall so certify, and state what efforts have been made to secure such a statement. When such failure or refusal has been certified, the agency shall immediately advise the Executive Vice Chairman.

(i) The agency and the Committee shall use compliance reports only in connection with the administration of the orders or the furtherance of their purposes.

(j) Compliance report forms are available in all GSA Stores Depots. Applicants may obtain such forms through the administering agency. The stock numbers of these items are as follows:

Standard form No.	Stock No.	Title
40	7540–823–8042	Compliance report.
40–A	7540–823–8043	Certificate of submission of current compliance report.
41 (part I)	7540–082–2621	Company-wide policies and employment data.
41 (part II)	7540–082–2619	Employment conditions at the project site.
41 (part III)	7540–082–2618	Employment data summary at the project site.

§ 1–12.805–5 Compliance reviews.

(a) The purpose of compliance reviews shall be to ascertain the extent to which the orders are being implemented by the creation of equal employment opportunity for all qualified persons in accordance with the national policy. They are not intended to interfere with the responsibilities of employers to determine the competence and qualifications of employees and applicants for employment. Both routine and special reviews shall be conducted by agencies to ascertain the extent to which contractors and subcontractors are complying with the orders, and to furnish information that may be useful to agencies and the Committee in carrying out their functions under the orders. If a contractor or subcontractor has contracts or subcontracts involving more than one agency, the agency having the predominant interest shall normally conduct compliance reviews. The agency under which the contractor or subcontractor holds the largest aggregate dollar value of contracts at the time of the filing of the most recent compliance report shall be deemed to have the predominant interest in any proceeding under this subpart unless otherwise provided by the Executive Vice Chairman.

(b) A routine compliance review consists of a general review of the practices of the contractor or subcontractor to ascertain compliance with the requirements of the order. A routine compliance review shall be considered a normal part of contract administration.

(c) A special compliance review consists of a comprehensive review of the employment practices of the contractor or subcontractor with respect to the requirements of the order. Special compliance reviews shall be conducted by the agency (1) from time to time, (2) when special circumstances, including complaints which are processed under § 1–12.805–6, warrant, or (3) when requested by the Executive Vice Chairman. The agency shall report the results of any special compliance review conducted by it to the Executive Vice Chairman.

§ 1–12.805–6 Complaints.

(a) Any employee of any contractor or subcontractor or applicant for employment with such contractor or subcontractor who believes himself to be aggrieved under the Equal Opportunity clause may, by himself or by an authorized representative, file in writing a complaint of alleged discrimination with the President's Committee or the agency. Such complaint must be filed not later than 90 days from the date of the alleged discrimination, unless the time is extended by the agency or the Executive Vice Chairman for good cause shown. If a complaint is filed directly with an agency, a copy will be forwarded in accordance with agency procedures directly to the Executive Vice Chairman within 10 days after receipt thereof. Where complaints have been filed in a timely manner the agency shall proceed with a prompt investigation of the complaint.

(b) Complaints will be required to be signed by the complainants or their authorized representatives and to contain the following information:

(1) Name and address (including telephone number) of the complainant.

(2) Name and address of the contractor or subcontractor who committed the alleged act of discrimination.

(3) A description of the act or acts considered to be discriminatory.

(4) Other pertinent information which will assist in the investigation and resolution of the complaint.

(c) Where a complaint contains incomplete information, the agency will request promptly the needed informtaion from the complainant. In the event such information is not furnished within 60 days of the date of such request, the case may be closed.

§ 1–12.805–7 Processing of matters by the agency.

Matters involving complaints submitted or referred to an agency (normally the predominant interest agency where the contractor or subcontractor has contracts involving more than one agency), and matters involving possible violations of the Equal Opportunity clause as indicated by a compliance re-

its own employment practices as well as of its subcontractors as numbers of these items are as follows:

view, report, or other procedure, shall be processed in accordance with agency procedures which will assure:

(a) Prompt investigation of complaints, or investigations as necessary of other indications of possible violations of the Equal Opportunity clause, and the development of a complete case record. Such investigations should include, where appropriate, (1) a review of the pertinent personnel practices and policies of the contractor or subcontractor concerned, (2) the circumstances under which the alleged discriminatory action occurred, and (3) other factors which are relevant to a determination as to whether the contractor or subcontractor in the particular case has complied with the Equal Opportunity clause;

(b) Resolution of apparent violations by informal means whenever possible;

(c) (1) With respect to the investigation of a complaint, the preparation and submission, within 60 days from receipt of such complaint by the agency or within such additional time as may be allowed by the Executive Vice Chairman, of the case record and a summary report to the Executive Vice Chairman. The summary report shall set forth (i) the name and address of the complainant, (ii) a brief summary of the findings, including a statement as to the agency's conclusions regarding the contractor's compliance or noncompliance with the order, (iii) a statement of the disposition of the case, including any corrective action taken and any sanctions or penalties imposed, or (iv) whenever appropriate, the recommended corrective action and sanctions or penalties;

(2) With respect to the investigation of a matter other than a complaint, the preparation and submission of a summary report containing the information required by § 1–12.805–7(c) (ii), (iii), or (iv).

(d) Prompt notification to the complainant, if any, and appropriate contractor or subcontractor of the closing of the case in those cases wherein the investigative findings by the agency concerned, upon review and concurrence by the Executive Vice Chairman, show no violation of the Equal Opportunity clause; and

(e) Further investigation, as requested, where the Executive Vice Chairman does not concur in the findings of the agency.

§ 1–12.805–8 Sanctions.

(a) *General.* In every case where investigation indicates the existence of an apparent violation of the provisions of the clause the matters should be resolved by informal means whenever possible. This will include, where appropriate, establishing a program for future compliance approved by the head of the agency. Where the apparent violation is not resolved by informal means, the agency may afford the contractor or subcontractor an opportunity for a hearing (see § 1–12.807). If a contractor or subcontractor, without a hearing, has complied with the recommendations or orders of an agency and believes such orders or recommendations to be erroneous, he shall, upon filing a request therefor within 10 days of such compliance, be accorded an opportunity for a hearing and review of the alleged erroneous action under § 1–12.807.

(b) *Termination.* A contract or subcontract may be canceled, terminated, or suspended, in whole or in part, for failure to comply with the provisions of the Equal Opportunity clause. Whenever an agency proposes to cancel or terminate, in whole or in part, a prime contract or to require cancellation or termination of a subcontract the contractor or subcontractor will be notified in writing of such proposed action and given at least 10 days from the mailing of the notice either to comply with the provisions of the contract or to mail a request for a hearing under § 1–12.807.

(c) *Debarment.* A contractor or subcontractor may be debarred from receiving contracts for failure to comply with the provisions of the Equal Opportunity clause provided that debarment has been recommended by the head of the agency, and approved by the Executive Vice Chairman. In every case where debarment is being proposed the contractor or subcontractor will be notified by the head of the agency, in writing, of the proposed recommendation and given 10 days from the receipt of such notice in which to mail a request for a hearing by the agency, under § 1–12.807, or for a hearing before the President's Committee.

(d) *Referral to the Department of Justice.* Each agency, with the approval of the Executive Vice Chairman, may recommend to the Department of Justice that, in cases where there is substantial or material violation or the threat of substantial or material violation of the provisions of the Equal Opportunity clause, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, or organizations, individuals, or groups which prevent directly or indirectly compliance with the aforesaid provisions: *Provided, however,* That no case shall be referred to the Department of Justice until the expiration of at least 10 days from the mailing of a notice of such proposed referral by the agency to the contractor or subcontractor involved, affording him an opportunity to comply with the provisions of the order. The agency may also recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to the agency.

(e) *Imposition of corrective action or sanction.* Following notification by the Executive Vice Chairman, the agency shall promptly take the corrective action or impose the sanction stipulated in the notice.

§ 1–12.806 [Reserved]

§ 1–12.807 Hearings.

§ 1–12.807–1 General.

(a) An opportunity for a hearing may be afforded to a contractor or a subcontractor by the agency when an apparent act, or acts, of discrimination, as shown by investigation, are not resolved informally.

(b) An opportunity for a hearing shall be afforded to a contractor or subcontractor by the agency when:

(1) The contractor or subcontractor having complied with the recommendation or orders of the agency, believes such recommendations or orders to be erroneous; or

(2) The agency proposes to debar the contractor or subcontractor.

§ 1–12.807–2 Delegation of authority.

The head of the agency may delegate to any person, or board of such persons within his agency, all the authority of the head of the agency conferred by the orders or the rules and regulations of the President's Committee to give notice of hearings, to conduct hearings, and to make findings of fact and recommendations as to whether a contractor or subcontractor is or has been in violation of the Equal Opportunity clause. If the head of an agency delegates his authority to a board, one of the members of the board shall be a person trained in the law, and the head of the agency shall designate one member to be the presiding officer of the board.

§ 1–12.807–3 Notice and contents.

(a) Whenever the agency proposes or is required to hold a hearing as provided in § 1–12.807–1, the agency shall cause a written notice to be served upon the contractor or subcontractor as provided in this section. The notice shall be signed by the head of the agency or his designee and dated, and shall include the following:

(1) A statement of the time and place of the hearing. The time and place shall be convenient and the time shall not be less than 10 days after service of the notice.

(2) A statement of the provisions of the order and regulations pursuant to which the hearing is to be held.

(3) A concise statement of the matters pursuant to which the action forming the basis of the hearing has been taken or is proposed to be taken.

(b) Service shall be made by mailing the notice to the last known address of the contractor or subcontractor by registered mail, return receipt requested.

(c) Whenever a contractor or subcontractor has been notified by the agency that debarment is proposed, the contractor or subcontractor may, within 10 days from the date of receipt of the notice, request a written statement of charges in reasonable detail and a hearing on such charges. If no request for a hearing has been received by the end of the ten day period the agency may assume that a hearing is not desired and may proceed to take the action proposed.

§ 1–12.807–4 Conduct of hearings.

Hearings shall be informally conducted. Every party shall have the right to counsel and a fair opportunity to present his case or defense, including such cross-examination as may be appropriate under the circumstances. Evidence and testimony, although not ordinarily admissible under legal rules of evidence, may be received subject to the discretion of the person presiding at the hearing.

§ 1–12.807–5 Findings and recommended conclusions.

As soon as practicable after completion of the hearing the person or board that conducted the hearing shall make written findings and recommended conclusions on the basis of the record with respect to all material issues. If the conclusion is that a violation of the Equal Opportunity clause has taken place, the agency may make recommendations to the Executive Vice Chairman, may cause the cancellation, termination, or suspension of the contract or subcontract or may with the approval of the Executive Vice Chairman impose such other sanctions, including debarment, as seem necessary and appropriate to carry out the purposes of the orders.

§ 1–12.808 Reinstatement of ineligible contractors or subcontractors.

Any contractor or subcontractor declared ineligible for further contracts or subcontracts under the orders may request reinstatement in a letter directed to the Executive Vice Chairman. In connection with the reinstatement proceeding, the contractor or subcontractor shall be required to show that it has now complied with the orders or that it has a program of compliance acceptable to the Executive Vice Chairman.

§ 1–12.809 Certificates of merit.

(a) Certificates of merit may be awarded:

(1) By the President's Committee on its own initiative. The Committee, acting through the Chairman or Vice Chairman, may award United States Government Certificates of Merit to employers or employee organizations which are or may hereafter be engaged in work under Government contracts if the Committee is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices and policies of the employee organization conform to the purposes and provisions of the order.

(2) By the Executive Vice Chairman upon the recommendation of the agency. The Committee, acting through the Executive Vice Chairman, may award a United States Government Certificate of Merit upon the recommendation of the agency. The recommendation should include a statement in sufficient detail to inform the Executive Vice Chairman of the basis for the recommended award.

(b) The Committee, acting through the Chairman or Vice Chairman, may at any time review the continued entitlement of any employer or employee organization to a certificate of merit, and may suspend or revoke the certificate.

§ 1–12.810 Solicitations or advertisements for employees.

The requirements of the Equal Opportunity clause regarding solicitations or advertisements for employees placed by or on behalf of a contractor or subcontractor will be satisfied whenever the contractor or subcontractor complies with any of the following:

(a) States expressly in the solicitations or advertising that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin;

(b) Uses display or other advertising, and the advertising includes an appropriate insignia prescribed by the Committee. The use of the insignia is considered subject to the provisions of 18 U.S.C. 701;

(c) Uses a single advertisement, and the advertisement is grouped with other advertisements under a caption which clearly states that all employers in the group assure all qualified applicants equal consideration for employment without regard to race, creed, color, or national origin;

(d) Uses a single advertisement in which appears in clearly distinguishable type the phrase "an equal opportunity employer."

§ 1–12.811 Access to records of employment.

Each contractor and subcontractor shall permit access during normal business hours to his books, records, and accounts pertinent to compliance with the orders and the rules and regulations of the Committee, by the contracting agency, the Executive Vice Chairman, and the Secretary of Labor for purposes of investigation to ascertain compliance with the orders and the rules, regulations, and relevant orders of the Committee. Information obtained in this manner shall be used only in connection with the administration of the orders.

§ 1–12.812 Rulings and interpretations.

The Executive Vice Chairman shall have authority to issue rulings and interpretations regarding the contracts portion of the orders and the regulations contained in this subpart. The rulings and interpretations of the Executive Vice Chairman, unless and until modified or revoked, shall be authoritative.

§ 1–12.813 Existing contracts and subcontracts.

All Government contracts and subcontracts in effect prior to April 5, 1961, which are not subsequently modified shall be administered in accordance with the nondiscrimination provisions of any prior applicable Executive Orders. Any Government contract or subcontract modified on or after April 5, 1961, but before June 22, 1963, shall be subject to Executive Order No. 10925. Any Government contract or subcontract modified on or after June 22, 1963, shall be subject to the order, and shall include as part of such modification the Equal Opportunity clause contained in Part II of Executive Order No. 11114. All federally assisted construction contracts in effect prior to July 22, 1963, which are not subsequently modified shall be administered in accordance with the provisions of any prior applicable agency regulations or instructions. Any federally assisted construction contract or subcontract modified on or after July 22, 1963, shall be subject to Executive Order No. 11114. Complaints received by, and violations coming to the attention of agencies regarding contracts and subcontract not subject to either Executive Order No. 10925 or 11114 shall be reported to the Executive Vice Chairman. The agency shall, upon its own initiative or upon the request of the Executive Vice Chairman, investigate such complaints or alleged violations and take such other action as may be appropriate.

Subpart 1–12.9 [Reserved]

Subpart 1–12.10—Nondiscrimination Because of Age

§ 1–12.1000 Scope of subpart.

This subpart prescribes the public policy against discrimination on the basis of age as set forth in Executive Order No. 11141, of February 12, 1964 (29 F.R. 2477).

§ 1–12.1001 Policy.

It is the policy of the Executive Branch of the Government that (a) contractors and subcontractors engaged in the performance of Federal contracts shall not, in connection with the employment, advancement, or discharge of employees, or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement, and (b) that contractors and subcontractors, or persons acting on their behalf, shall not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for such employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

§ 1–12.1002 Implementation of policy.

Implementation of this policy is to be handled by bringing the policy to the attention of business concerns. Use of contract clauses is not required.

§ 1–12.1003 Handling of complaints.

In the event that letters or other representations are received regarding a concern's compliance with the foregoing public policy against discrimination on the basis of age, the matter should be handled on the basis of a communication directed to the concern involved (letter, if appropriate) which sets forth the policy, indicates that the concern's compliance with the policy has been questioned, and requests that the concern review its compliance and, if necessary, take appropriate measures to comply with the policy.

PART 1–13 [RESERVED]

PART 1–14—INSPECTION AND ACCEPTANCE

Sec.
1–14.000 Scope of part.

Subpart 1–14.1—Inspection

1–14.100 Definitions.
1–14.101 General.
1–14.102 Responsibility for inspection.
1–14.103 Use of Government inspection facilities.
1–14.103–1 General.
1–14.103–2 Inspection interchange agreements.
1–14.103–3 Inspection services available from Federal agencies.
1–14.103–4 Furnishing inspection services.
1–14.103–5 Reimbursement for services.
1–14.104 Contractor responsibility.
1–14.105 Places of inspection.
1–14.105–1 General.
1–14.105–2 Inspection at source.
1–14.105–3 Inspection at destination.
1–14.106 Inspection of small purchases ($2,500 or less).
1–14.107 Rejection of nonconforming supplies or services.
1–14.108 Government inspection of supplies under subcontracts.
1–14.109 Inspection for foreign governments.

Subpart 1–14.2—Acceptance

1–14.201 General.
1–14.202 [Reserved]
1–14.203 Point of acceptance.
1–14.204 Responsibility for acceptance.
1–14.205 Certificates of conformance.
1–14.206 Acceptance of supplies or services not conforming with contract requirements.

AUTHORITY: The provisions of this Part 1–14 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1–14.000 Scope of part.

This part deals with inspection and acceptance under contracts for supplies or services (other than construction contracts).

Subpart 1–14.1—Inspection

§ 1–14.100 Definitions.

(a) "Inspection" means the examination (including testing) of supplies and services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the supplies and services conform to contract requirements.

(b) "Testing" is an element of inspection and generally denotes the determination by technical means of the properties or elements of supplies, or components thereof, and involves the application of established scientific principles and procedures.

§ 1–14.101 General.

(a) Inspection on behalf of the Government shall be conducted in all cases prior to acceptance, except as permitted by § 1–14.205. Inspection shall be accomplished by or under the direction or supervision of Government personnel. The contractor may be required under the terms of the contract to establish and maintain an acceptable inspection or quality control system (see § 1–14.104) to assure compliance with contract specifications with a minimum of Government inspection. Except as otherwise provided in the contract, testing required to be performed by the contractor may be performed in the contractor's or subcontractor's laboratory or any other laboratory acceptable to the Government. A manufacturer's certificate or other statement of quality or quantity may be considered in determining whether supplies or services are in conformity with the contract. In no event shall any contract preclude the Government from performing inspection.

(b) The type and extent of inspection needed depend on the particular procurement. For example, when items which would involve small losses in the event of defects or when knowledge of the contractor's reputation or past performance provides assurance that the supplies would be replaced or corrected without contest, and the cost of detailed inspection is not justified, inspection may consist only of checks for identity, quantity, and shipping damage.

§ 1–14.102 Responsibility for inspection.

Inspection, or the arrangement therefor, is the responsibility of the contracting activity. Where a contracting activity uses the inspection services of another Federal agency, the agency performing such inspection has primary inspection cognizance, and its inspection determinations are binding on the contracting activity for which the inspection services are performed. In interdepartmental procurements where Government inspection is to be made at source, it generally will be made by inspectors of the contracting agency; but this general rule does not alter inspection interchange agreements or preclude the use of inspectors of another agency located at or servicing the contractor's plant. Where Government inspection at destination is required in interdepartmental procurements, the agency requiring the supplies may be requested to arrange for the inspection.

§ 1–14.103 Use of Government inspection facilities.

§ 1–14.103–1 General.

By appropriate inspection agreements, executive agencies shall provide for the use of inspection services of other agencies when such use will assure the most economical and effective inspection consistent with the best interest of the Government.

(a) Inspection services may be arranged for on the basis of individual plants, geographic areas, specified contracts, or groups or classes of contracts or commodities.

(b) Inspection agreements shall set forth the arrangements regarding reimbursement, if any, for inspection services (see § 1–14.103–5) and shall include specific provisions for (1) use of the practices, records, and forms of the activity performing inspection, unless the use of others is mutually agreeable; (2) channels of communications; and (3) designation of source and delivery date of any Government inspection equipment to be supplied.

§ 1–14.103–2 Inspection interchange agreements.

(a) Wherever there are multiple Government inspection assignments in a supplier's plant, the agencies involved shall by an inspection interchange agreement provide for the interchange of inspection services. Specific contracts may be exempted from interchange agreements if they are:

(1) Contracts for research, development, testing, or experimental work involving inspection tasks that the contracting agency determines can be most effectively performed by its own inspection activity; or

(2) Production contracts which can be effectively serviced only by the contracting agency's inspectors because they have acquired special skills required to perform the unusual or highly technical tasks involved.

(b) Inspection interchange agreements shall be designed to eliminate duplication, overlapping, or multiple assignments of Government inspection activities in any one plant.

(c) Agency procedures should permit detailed inspection interchange agreements to be initiated and completed at the operating level which is in a position to insure coordinated and effective implementation. Where operating level activities are unable to reach inspection interchange agreements or the propriety of exemptions is questioned and cannot be resolved, such matters shall be referred independently by each operating level activity through channels to the head of its agency for resolution.

§ 1–14.103–3 Inspection services available from Federal agencies.

(a) *General Services Administration.* (1) Agencies may arrange with the nearest General Services Administration regional Quality Control Division for inspection services (including sampling and laboratory, chemical, and physical testing) and advice required for the proper acceptance of purchased supplies and services. Requests which involve unusually large or continuing inspection programs should be made to the General Services Administration, Federal Supply Service, Quality Control Division, General Services Regional Office Building, Washington, D.C., 20407. Such inspection services and advice will be rendered to the maximum extent that current workload permits and in accordance with the reimbursement policy outlined in § 1–14.103–5. Special attention will be given to assisting ordering offices in the inspection of supplies and services procured under Federal Supply Schedule contracts.

(2) If the General Services Administration is unable to render the inspection assistance requested, it will endeavor to arrange for another Federal agency to provide the required services.

(b) *Other agencies.* In addition to the General Services Administration, many Federal agencies have quality control or inspection organizations which provide inspection services. Information as to the type of services available from these agencies, their policy on performing services for other Federal agencies, and the making of arrangements for their services, is contained in the Directory of U.S. Government Inspection Services and Testing Laboratories (see (c) of this § 1–14.103–3).

(c) *Directory of U.S. Government Inspection Services and Testing Laboratories.* The "Directory of U.S. Government Inspection Services and Testing Laboratories," issued by the General Services Administration, contains pertinent information concerning the major inspection offices and testing laboratories of the Federal Government. It should be used by all Federal agencies when requiring inspection services. The Directory will be helpful in determining the facility best equipped, staffed, and geographically located to perform the desired services most economically. Copies of the Directory are available to Federal agencies upon request to the General Services Administration Region 3, Reproduction and Distribution Division, General Services Regional Office Building, Washington, D.C., 20407. Copies of the Directory may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C., 20402.

§ 1–14.103–4 Furnishing inspection services.

Executive agencies should, upon request, provide inspection services to any Federal agency, any mixed ownership corporation (as defined in the Government Corporation Control Act), the District of Columbia, the Senate, the House of Representatives, and the Architect of the Capitol and any activity under his direction.

§ 1–14.103–5 Reimbursement for services.

(a) Any executive agency may supply, without reimbursement or transfer of funds therefor, services, work, materials, and equipment to another executive agency in connection with the inspection of supplies being purchased by the latter agency. The determination whether or not to require monetary reimbursement for inspection services rendered rests with the agency performing the services. Such determinations should be made in accordance with the following:

(1) Agencies may, and should, to the maximum extent practicable, exchange inspection services on a reimbursement-in-kind basis without requiring cross billing or monetary reimbursement.

(2) Agencies may perform inspection services of any value without requiring reimbursement where resident or itinerant inspectors are available in a manufacturing plant or nearby and where the additional work will not necessitate personnel increases.

(3) Agencies should, generally, waive reimbursements of less than $100 and, in any event, should not seek reimbursement if the cost of the administrative procedures attendant to billing and collecting for inspection services would equal or exceed the cost of the services performed.

(b) Whenever inspection services are performed for other than an executive agency, reimbursement therefor shall be in accordance with applicable laws and regulations.

§ 1–14.104 Contractor responsibility.

(a) The standard inspection clause in § 1–7.101–5 (and in Standard Form 32, General Provisions (Supply Contract)) requires the contractor to maintain an inspection system acceptable to the Government and records of all inspection work performed by the contractor. The contractor's inspection system should be such as to provide reasonable assurance that the supplies subject to inspection will conform to contract requirements and should include any quality control procedures necessary to this end.

(b) Where quality control procedures are considered necessary (as may be the case, for example, when complex items are being purchased), a clause specifically requiring the contractor to maintain a quality control system acceptable to the Government shall be included in the contract unless the items are being purchased under specifications which in themselves contain adequate quality control provisions. In addition, the contract shall specify the quality control requirements to be complied with by the contractor, including control measures for manufacturing processes and documentation pertinent to quality, testing and inspection, fabrication, and delivery.

(c) Government inspection activities shall plan and conduct systematic evaluation and verification of contractors' inspection systems, quality control systems, and supplies, to the extent necessary to obtain maximum assurance of quality production by the contractor consistent with efficient use of manpower and facilities. In any case, however, the contractor shall be required to perform all examinations and tests called for by the contract requirements except those which are reserved for performance by the Government.

§ 1–14.105 Places of inspection.

§ 1–14.105–1 General.

(a) Inspection of supplies and services shall be made at such times and places (including any stage and period of manufacture, and including subcontractors' plants) as are necessary to determine that the supplies and services conform to contract requirements. Each contract shall designate the place or places at which the Government intends to perform inspection. Where the contract provides for inspection at source, the place or places of inspection may not be changed without the authorization of the contracting officer.

(b) Where a contract provides for delivery and acceptance at destination (see § 1–14.203) and the Government inspects the supplies for conformance with contract specifications at a place other than destination, the supplies shall not be reinspected at destination for such conformance. However, such supplies should be examined at destination for damage in transit, quantity, and possible substitution or fraud.

§ 1–14.105–2 Inspection at source.

Supplies and services shall be inspected at source where:

(a) Inspection at any other point would require uneconomical disassembly or destructive testing;

(b) Considerable loss would result from the manufacture and shipment of unacceptable supplies or from the delay in making necessary corrections;

(c) Special instruments, gauges, or facilities required for inspection are available only at source;

(d) Inspection at any other point would destroy or require the replacement of costly special packing and packaging;

(e) A quality control system is required by the contract or inspection during performance of the contract is essential;

(f) Supplies requiring technical inspection are destined for points of embarkation for overseas shipment; or

(g) It is otherwise determined to be in the best interest of the Government.

§ 1–14.105–3 Inspection at destination.

Supplies and services shall be inspected at destination where:

(a) Deliveries of supplies purchased "off the shelf" are made from a point other than that of manufacture;

(b) Necessary testing equipment is located only at destination;

(c) Products being purchased are processed under direct control of the National Institutes of Health or the Food and Drug Administration, Department of Health, Education, and Welfare;

(d) Perishable subsistence supplies are purchased within the United States, except that perishable subsistence supplies destined for overseas shipment will normally be inspected for condition and quantity at points of embarkation;

(e) Brand name products are purchased for authorized resale (through commissaries or similar facilities), except that where supplies are destined for direct overseas shipment, inspection (and acceptance) may be accomplished by the contracting officer or his authorized representative on the basis of a tally sheet evidencing receipt of shipment signed by the port transportation officer or other designated official at the transshipment point; or

(f) It is otherwise determined to be in the best interest of the Government.

§ 1–14.106 Inspection of small purchases ($2,500 or less).

(a) This § 1–14.106 applies to all small purchases, including items described in Federal and military specifications, and qualified products. In determining the type and extent of Government inspection to be required on small purchases, the smallness of possible losses and the likelihood of uncontested replacement of defective articles shall be considered.

(b) Generally, inspection of small purchases shall be at destination. Purchasers, users, and installers may be considered inspectors for small purchase inspection purposes.

(c) Unless detailed technical inspection is necessary, inspection shall consist of examination of (1) type and kind; (2) quantity; (3) damage; (4) operability, if readily determinable; and (5) packaging and marking, if applicable.

(d) Detailed technical inspection shall be performed if special specifications are involved or if defective supplies are likely to harm personnel or equipment. Such inspection may also be necessary for other reasons (e.g., where the use of defective supplies may cause significant loss in program time or significant increase in program costs).

(e) Detailed technical inspection may be limited to those characteristics which are special or which are likely to cause harm. Where repetitive purchases are made of the same item from the same manufacturing source and there is good reason to rely upon the integrity of the manufacturer because of known safeguards and a significant history of defect-free purchases, such inspection may be further limited to a check of occasional purchases.

§ 1–14.107 Rejection of nonconforming supplies or services.

(a) Contractors ordinarily shall be given an opportunity to correct or replace nonconforming supplies or services if this can be done within the required delivery schedule. Unless the contract provides otherwise (as may be the case in some cost-reimbursement type contracts), such correction or replacement shall be without additional cost to the Government. The standard inspection clause in § 1–7.101–5 reserves to the Government the right to charge the contractor the cost of Government reinspection and retests because of prior rejection.

(b) Notices of rejection of nonconforming supplies or services shall be in writing if (1) the supplies have been delivered to a point other than the con-

tractor's plant; (2) the contractor persists in offering nonconforming supplies or services for acceptance; or (3) delivery or performance is, or is likely to be, overdue without excusable cause. The reasons for rejection shall be stated. Since under certain circumstances acceptance may be implied where timely notice of rejection is not furnished, notices of rejection should be furnished promptly to contractors.

§ 1–14.108 Government inspection of supplies under subcontracts.

Government inspection of subcontracted supplies shall be made only when required in the interest of the Government. The primary purpose of subcontract inspection is to assist the Government inspector at the prime contractor's plant in determining the conformance of supplies with contract requirements. It does not relieve the prime contractor of any of his responsibilities under the contract. Supplies that do not qualify under the criteria in § 1–14.105–2 for Government inspection at source shall not be inspected by the Government at the subcontractor's plant. Supplies for which certificates, records, reports, and similar evidence of quality are available at the prime contractor's plant shall not be Government inspected at the subcontractor's plant except occasionally to verify such evidence. However, Government inspection shall be performed at a subcontractor's plant whenever the Government contract requires. All oral and written statements and contract provisions relating to the inspection of subcontracted supplies shall be so worded as not to (a) affect the contractual relationship between the prime contractor and the Government or between the prime contractor and the subcontractor, (b) establish a contractual relationship between the Government and the subcontractor, or (c) constitute a waiver of the Government's right to inspect or reject supplies.

§ 1–14.109 Inspection for foreign governments.

Inspection will be performed only for friendly foreign governments or international agencies and shall be administered in accordance with the foreign policy and security objectives of the United States. Such inspection will be provided only where consistent with or required by legislation, executive orders, or any agency policies concerning mutual security programs, setting forth foreign policy and security objectives.

Subpart 1–14.2—Acceptance

§ 1–14.201 General.

As used in Government contracts, "acceptance" generally means the act of an authorized representative of the Government by which the Government assents to ownership by it of existing and identified supplies, or approves specific services rendered, as partial or complete performance of the contract. Except as provided in § 1–14.206, and subject to other terms and conditions of the contract, the Government thereby acknowledges, among other things, that the supplies or services are in conformity with contract requirements, including those of quality, quantity, packaging, and marking. Depending upon the provisions of the contract, acceptance may be effected before delivery, at the time of delivery, or after delivery. However, supplies and services shall not be accepted prior to inspection, except as permitted by § 1–14.205. Acceptance shall ordinarily be evidenced by execution of an acceptance certification on an inspection or receiving report form. Where acceptance is accomplished at a point other than destination, supplies shall not be reinspected at destination for acceptance purposes. However, such supplies should be examined at destination for damage in transit, quantity, and possible substitution or fraud.

§ 1–14.202 [Reserved]

§ 1–14.203 Point of acceptance.

Each contract shall specify the point of acceptance. Contracts which provide for delivery f.o.b. destination shall provide for acceptance at destination whether inspection is to occur at destination or at source. Contracts which provide for delivery f.o.b. origin shall ordinarily provide for acceptance (and inspection) at source.

§ 1–14.204 Responsibility for acceptance.

Acceptance is the responsibility of the contracting officer or his authorized representative. Where a contracting activity uses services of another Federal agency for the purpose of acceptance, the acceptance by the other agency is binding on the activity for which the services are performed.

§ 1–14.205 Certificates of conformance.

A contractor's certification that supplies or services comply with contract requirements may be considered a proper element incident to acceptance of supplies or services. Standard or commercial items, or supplies of a simple, noncritical nature, may be accepted solely on the basis of a contractor's certificate of conformance if:

(a) The contracting officer or his authorized representative determines (1) that acceptance on that basis is in the best interest of the Government, and (2) that, because of knowledge of the supplier's reputation or past performance, it is very likely that the supplies furnished will be acceptable and that any defective supplies would be replaced or corrected by the supplier without contest; and

(b) The contract (initially, or by amendment) (1) reserves to the Government the right after acceptance to inspect the supplies within a reasonable time after delivery and to reject defective items, and (2) imposes upon the contractor the obligation, in the event of such rejection, to promptly replace or correct the defective items or to reimburse the Government therefor.

§ 1–14.206 Acceptance of supplies or services not conforming with contract requirements.

Except as provided in this § 1–14.206, supplies or services tendered for acceptance which do not conform with contract requirements shall be rejected (see § 1–14.107). However, if it is in the Government's best interest, for reasons of economy or the urgency of the requirement, acceptance of supplies or services which do not meet all contract requirements may occasionally be desirable. Prior to such acceptance, the contracting officer shall obtain the approval of the requiring activity. If the nonconformity is a significant deviation from contract requirements, or if the contracting officer determines that a price reduction is appropriate, the acceptance of nonconforming supplies or services shall be covered by an appropriate modification of the contract. A deviation is significant if it adversely affects safety; durability; performance;

interchangeability of parts or assemblies; weight, where weight is a significant consideration; or any other basic objective of the specification. Where acceptance of nonconforming supplies or services is to be at a reduction in price, the amount of the reduction shall be fair and reasonable (see paragraph (b) of the standard inspection clause in § 1–7.101–5).

PART 1–15—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.
1–15.000 Scope of part.

Subpart 1–15.1—Applicability

1–15.101 Scope of subpart.
1–15.102 Cost-reimbursement supply and research contracts with concerns other than educational institutions.
1–15.103 Cost-reimbursement research contracts with educational institutions.
1–15.104 Cost-reimbursement construction contracts.
1–15.105 [Reserved]
1–15.106 Use of cost principles for fixed-price type contracts.
1–15.107 Advance understandings on particular cost items.

Subpart 1–15.2—Principles and Procedures for Use in Cost-Reimbursement Type Supply and Research Contracts With Commercial Organizations

1–15.201 Basic considerations.
1–15.201–1 Composition of total cost.
1–15.201–2 Factors affecting allowability of costs.
1–15.201–3 Definition of reasonableness.
1–15.201–4 Definition of allocability.
1–15.201–5 Credits.
1–15.202 Direct costs.
1–15.203 Indirect costs.
1–15.204 Application of principles and procedures.
1–15.205 Selected costs.
1–15.205–1 Advertising costs.
1–15.205–2 Bad debts.
1–15.205–3 Bidding costs.
1–15.205–4 Bonding costs.
1–15.205–5 Civil defense costs.
1–15.205–6 Compensation for personal services.
1–15.205–7 Contingencies.
1–15.205–8 Contributions and donations.
1–15.205–9 Depreciation.
1–15.205–10 Employee morale, health, and welfare costs and credits.
1–15.205–11 Entertainment costs.
1–15.205–12 Excess facility costs.
1–15.205–13 Fines and penalties.
1–15.205–14 Food service and dormitory costs and credits.
1–15.205–15 Fringe benefits.
1–15.205–16 Insurance and indemnification.
1–15.205–17 Interest and other financial costs.
1–15.205–18 Labor relations costs.
1–15.205–19 Losses on other contracts.
1–15.205–20 Maintenance and repair costs.
1–15.205–21 Manufacturing and production engineering costs.
1–15.205–22 Material costs.
1–15.205–23 Organization costs.
1–15.205–24 Other business expenses.
1–15.205–25 Overtime, extra-pay shift and multi-shift premiums.
1–15.205–26 Patent costs.
1–15.205–27 Pension plans.
1–15.205–28 Plant protection costs.
1–15.205–29 Plant reconversion costs.
1–15.205–30 Precontract costs.
1–15.205–31 Professional service costs—legal, accounting, engineering, and other.
1–15.205–32 Profits and losses on disposition of plant, equipment, or other capital assets.
1–15.205–33 Recruitment costs.
1–15.205–34 Rental costs (including sale and leaseback of facilities).
1–15.205–35 Research and development costs.
1–15.205–36 Royalties and other costs for use of patents.
1–15.205–37 Selling costs.
1–15.205–38 Service and warranty costs.
1–15.205–39 Severence pay.
1–15.205–40 Special tooling costs.
1–15.205–41 Taxes.
1–15.205–42 Termination costs.
1–15.205–43 Trade, business, technical, and professional activity costs.
1–15.205–44 Training and educational costs.
1–15.205–45 Transportation costs.
1–15.205–46 Travel costs.
1–15.205–47 Economic planning costs.

Subpart 1–15.3—Principles for Determining Applicable Costs Under Research Contracts With Educational Institutions

1–15.301 General.
1–15.302 Definitions.
1–15.303 Direct costs.
1–15.304 Indirect costs.
1–15.305 Applicable costs.
1–15.306 Determination of indirect costs.
1–15.306–1 General.
1–15.306–2 Apportionment.
1–15.306–3 Allocation.
1–15.306–4 Overhead determinations acceptable under special circumstances.
1–15.307 General standards for selected items of cost.
1–15.307–1 Purpose and applicability.
1–15.307–2 Costs applicable to instruction.
1–15.307–3 Allowable and unallowable costs.

Subpart 1–15.4—Construction Contracts

1–15.401 Definition of construction contract.
1–15.402 General basis for determination of costs.
1–15.403 Examples of items of allowable costs.
1–15.404 Examples of items of unallowable costs.
1–15.405 Examples of subjects requiring special considerations.
1–15.406 Cost interpretation of pension and retirement plans.

Subpart 1–15.5—[Reserved]

Subpart 1–15.6—Guidelines for Application in the Negotiation and Administration of Fixed-Price Type Contracts and in the Negotiation of Termination Settlements

1–15.600 Scope of subpart.
1–15.601 Definition of fixed-price type contracts.
1–15.602 Basic considerations.
1–15.603 Cost principles and their use.

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§ 1–15.000 Scope of part.

This part contains general cost principles and procedures for the determination and allowance of costs in connection with the negotiation and administration of cost-reimbursement type contracts and contains guidelines for use, where appropriate, in the evaluation of costs in connection with certain negotiated fixed-price type contracts and contracts terminated for the convenience of the Government.

Subpart 1–15.1—Applicability

§ 1–15.101 Scope of subpart.

This subpart describes the applicability of succeeding subparts of this part to the various types of contracts in connection with which cost principles and procedures are used, and the need for advance understandings.

§ 1–15.102 Cost-reimbursement supply and research contracts with concerns other than educational institutions.

This category includes all cost-reimbursement type contracts (see § 1–3.405) for supplies, services, or experimental, developmental, or research work (other than with educational institutions, as to which § 1–15.103 applies), except that it does not include construction contracts (see § 1–15.104) or facilities contracts. The cost principles and procedures set forth in Subpart 1–15.2 may be incorporated (by reference, if desired) in cost-reimbursement supply and research contracts with other than educational institutions as the basis—

(a) For determination of reimbursable costs under such contracts, including cost-reimbursement type subcontracts thereunder, and the cost-reimbursement portion of time-and-materials contracts (§ 1–3.406–1) except in such contracts where material is priced, in accordance with § 1–3.406–1(d), on a basis other than at cost;

(b) For the negotiation of overhead rates; and

(c) For the determination of costs of terminated cost-reimbursement type contracts during the period invoices or vouchers are submitted in accordance with § 1–8.402, and for the settlement of such contracts by determination (§1–8.209–7).

§ 1–15.103 Cost-reimbursement research contracts with educational institutions.

(a) This category includes all cost-reimbursement type contracts (see § 1–3.405) for experimental, developmental, or research work with educational institutions. The cost principles and procedures set forth in Subpart 1–15.3 shall be incorporated (by reference, if desired) in cost-reimbursement research contracts with educational institutions as the basis—

(1) For determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder;

(2) For the negotiation of overhead rates; and

(3) For the determination of costs of terminated cost-reimbursement type contracts during the period invoices or vouchers are submitted in accordance with § 1–8.402, and for settlement of such contracts by determination (§ 1–8.209–7).

(b) In addition, Subpart 1–15.3 is to be used in determining allowable costs of research and development performed by educational institutions under grants.

§ 1–15.104 Cost-reimbursement construction contracts.

This category includes all cost-reimbursement type contracts for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. It also includes cost-reimbursement type contracts for architect-engineer services related to such construction. It does not include contracts for vessels, aircraft, or other kinds of personal property. The cost principles and procedures set forth in Subpart 1–15.4 may be incorporated (by reference, if desired) in cost-reimbursement construction contracts as the basis—

(a) For determination of reimbursable costs under cost-reimbursement type contracts, including cost-reimbursement type subcontracts thereunder;

(b) For the negotiation of overhead rates; and

(c) For the determination of costs of terminated cost-reimbursement type contracts during the period invoices or vouchers are submitted in accordance with § 1–8.402, and for settlement of such contracts by determination (§ 1–8.209–7).

§ 1–15.105 [Reserved]

§ 1–15.106 Use of cost principles for fixed-price type contracts.

Subpart 1–15.6 provides guidance for the use of Subparts 1–15.2, 1–15.3, and 1–15.4 where appropriate, in the evaluation of costs in connection with the negotiation of certain fixed-price type contracts and termination settlements.

§ 1–15.107 Advance understandings on particular cost items.

The extent of allowability of the selected items of cost covered in Subparts 1–15.2, 1–15.3, and 1–15.4 has been stated to apply broadly to many accounting systems in varying contract situations. Thus, as to any given contract, the reasonableness and allocability of certain items of costs may be difficult to determine, particularly in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective contractors, particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by contracting officers. Any such agreement should be incorporated in cost-reimbursement type contracts, or made a part of the contract file in the case of negotiated fixed-price type contracts, and should govern the cost treatment covered thereby throughout the performance of the contract. But the absence of such an advance agreement on any element of cost will not, in itself, serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

(a) Compensation for personal services;

(b) Use charge for fully depreciated assets;

(c) Deferred maintenance costs;

(d) Precontract costs;

(e) Research and development costs;

(f) Royalties;

(g) Selling and distribution costs; and

(h) Travel costs, as related to special or mass personnel movement, and to the class of air-travel accommodations allowable.

Subpart 1–15.2—Principles and Procedures for Use in Cost-Reimbursement Type Supply and Research Contracts With Commercial Organizations

§ 1–15.201 Basic considerations.

§ 1–15.201–1 Composition of total cost.

The total cost of a contract is the sum of the allowable direct and indirect costs allocable to the contract, incurred or to be incurred, less any allocable credits. In ascertaining what constitutes costs, any generally accepted method of determining or estimating costs that is equitable under the circumstances may be used, including standard costs properly adjusted for applicable variances.

§ 1–15.201–2 Factors affecting allowability of costs.

Factors to be considered in determining the allowability of individual items of cost include (a) reasonableness, (b) allocability, (c) application of those generally accepted accounting principles and practices appropriate to the particular circumstances, and (d) any limitations or exclusions set forth in this Subpart 1–15.2, or otherwise included in the contract as to types or amounts of cost items.

§ 1–15.201–3 Definition of reasonableness.

A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with firms or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arm's length bargaining, Federal and State laws and regulations, and contract terms and specifications;

(c) The action that a prudent business man would take in the circumstances, considering his responsibilities to the owners of the business, his employees, his customers, the Government, and the public at large; and

(d) Significant deviations from the established practices of the contractor which may unjustifiably increase the contract costs.

§ 1–15.201–4 Definition of allocability.

A cost is allocable if it is assignable or chargeable to a particular cost objective, such as a contract, product, product line, process, or class of customer or activity, in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it:

(a) Is incurred specifically for the contract;

(b) Benefits both the contract and other work, or both Government work and other work, and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

§ 1–15.201–5 Credits.

The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the contractor, shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

§ 1–15.202 Direct costs.

(a) A direct cost is any cost which can be identified specifically with a particular cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with the contract are direct costs of the contract and are to be charged directly thereto. Costs identified specifically with other work of the contractor are direct costs of that work and are not to be charged to the contract directly or indirectly. When items ordinarily chargeable as indirect costs are charged to Government work as direct costs, the cost of like items applicable to other work of the contractor must be eliminated from indirect costs allocated to Government work.

(b) This definition shall be applied to all items of cost of significant amount unless the contractor demonstrates that the application of any different current practice achieves substantially the same results. Direct cost items of minor amount may be distributed as indirect costs as provided in § 1–15.203.

§ 1–15.203 Indirect costs.

(a) An indirect cost is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Minor direct cost items may be considered to be indirect costs for reasons of practicality. After direct costs have been determined and charged directly to the contract or other work as appropriate, indirect costs are those remaining to be allocated to the several classes of work.

(b) Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accuring to the several cost objectives. Commonly, manufacturing overhead, selling expenses, and general and administrative expenses, are separately grouped. Similarly, the particular case may require subdivisions of these groupings, e.g., building occupancy costs might be separable from those of personnel administration within the manufacturing overhead group. The number and composition of the groupings should be governed by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

(c) Each cost grouping shall be distributed to the appropriate cost objectives. This necessitates the selection of a distribution base common to all cost objectives to which the grouping is to be allocated. The base should be selected so as to permit allocation of the grouping on the basis of the benefits accruing to the several cost objectives. This principle for selection is not to be applied so rigidly as to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

(d) The method of allocation of indirect costs must be based on the particular circumstances involved. The method shall be in accord with those generally accepted accounting principles which are applicable in the circumstances. The contractor's established practices, if in accord with such accounting principles, shall generally be acceptable. However, the methods used by the contractor may require reexamination when:

(1) Any substantial difference occurs between the cost patterns of work under the contract and other work of the contractor; or

(2) Any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, the inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

(e) A base period for allocation of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period will be the contractor's fiscal year; however, use of a shorter period may be appropriate in case of (1) contracts whose performance involves only a minor portion of the fiscal year, or (2) where it is general practice in the industry to use a shorter period. In any event the base period or periods shall be so selected as to avoid inequities in the allocation of costs. When the contract is performed over an extended period of time, as many such base periods will be used as will be required to represent the period of contract performance.

§ 1–15.204 Application of principles and procedures.

(a) Costs shall be allowed to the extent that they are reasonable (see § 1–15.201–3), allocable (see § 1–15.201–4), and determined to be allowable in view of the other factors set forth in §§ 1–15.201–2 and 1–15.205. These criteria apply to all of the selected items of cost which follow, notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

(b) Costs incurred as reimbursements to a subcontractor under a cost-reimbursement type subcontract of any tier above the first fixed-price subcontract

are allowable to the extent that allowance is consistent with the subpart of this Part 1–15 which is appropriate to the subcontract involved. Thus, if the subcontract is for supplies, such costs are allowable to the extent that the subcontractor's costs would be allowable if this Subpart 1–15.2 were incorporated in the subcontract; if the subcontract is for construction, such costs are allowable to the extent that the subcontractor's costs would be allowable if Subpart 1–15.4 were incorporated in the subcontract.

(c) Selected items of cost are treated in § 1–15.205. However, § 1–15.205 does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in § 1–15.205 is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this subpart and, where appropriate, the treatment of similar or related selected items.

§ 1–15.205 Selected costs.

§ 1–15.205–1 Advertising costs.

(a) Advertising costs mean the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, trade papers, outdoor advertising, dealer cards and window displays, conventions, exhibits, free goods and samples, and the like.

(b) The only advertising costs allowable are those which are solely for (1) the recruitment of personnel required for the performance by the contractor of obligations arising under the contract, when considered in conjunction with all other recruitment costs, as set forth in § 1–15.205–33; (2) the procurement of scarce items for the performance of the contract; or (3) the disposal of scrap or surplus materials acquired in the performance of the contract. Costs of this nature, if incurred for more than one Government contract or for both Government work and other work of the contractor, are allowable to the extent that the principles in §§ 1–15.201–3, 1–15.201–4, and 1–15.203 are observed.

§ 1–15.205–2 Bad debts.

Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, related collection costs, and related legal costs, are unallowable.

§ 1–15.205–3 Bidding costs.

Bidding costs are the costs of preparing bids or proposals on potential Government and non-Government contracts or projects, including the development of engineering data and cost data necessary to support the contractor's bids or proposals. Bidding costs of the current accounting period of both successful and unsuccessful bids and proposals normally will be treated as allowable indirect costs, in which event no bidding costs of past accounting periods shall be allowable in the current period to the Government contract. However, if the contractor's established practice is to treat bidding costs by some other method, the results obtained may be accepted only if found to be reasonable and equitable.

§ 1–15.205–4 Bonding costs.

(a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of his business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 1–15.205–5 Civil defense costs.

(a) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the contractor's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the contractor.

(b) Costs of capital assets under (a) above are allowable through depreciation in accordance with § 1–15.205–9.

(c) Contributions to local civil defense funds and projects are unallowable.

§ 1–15.205–6 Compensation for personal services.

(a) *General.*

(1) Compensation for personal services includes all remuneration paid currently or accrued, in whatever form and whether paid immediately or deferred, for services rendered by employees to the contractor during the period of contract performance. It includes, but is not limited to, salaries, wages, directors' and executive committee members' fees, bonuses (including stock bonuses), incentive awards, employee stock options, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans. Except as otherwise specifically provided in this § 1–15.205–6, such costs are allowable to the extent that the total compensation of individual employees is reasonable for the services rendered and they are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(2) Compensation is reasonable to the extent that the total amount paid or accrued is commensurate with compensation paid under the contractor's established policy and conforms generally to compensation paid by other firms of the same size, in the same industry, or in the same geographic area, for similar services. In the administration of this principle, it is recognized that not every compensation case need be subjected in detail to the above tests. Such tests need be applied only to those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line. However, certain conditions give rise to the need for special consideration and possible limitation as to allowability for contract cost purposes where amounts appear excessive. Among such conditions are the following:

(i) Compensation to owners of closely held corporations, partners, sole proprietors, or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of profits.

(ii) Any change in a contractor's compensation policy resulting in a substantial increase in the contractor's level of compensation, particularly when it was concurrent with an increase in the ratio of Government contracts to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

(iii) The contractor's business is such that his compensation levels are not subject to the restraints normally occurring in the conduct of competitive business.

(3) Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits.

(4) Notwithstanding any other provisions of this § 1–15.205–6, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in the performance of Government contracts, are determined to be unreasonable either because they are unwarranted by the character and circumstances of the work or because they are discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (for example, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (for example, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in individual personnel compensation (in whatever form or name) in excess of that being paid for similar non-Government work under

comparable circumstances. Disallowance of costs will not be made under this subparagraph (4) unless:

(i) The contractor has been permitted an opportunity to justify the costs; and

(ii) Due consideration has been given to whether there are unusual conditions pertaining to the Government contract work which impose burdens, hardships, or hazards on the contractor's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(5) In addition to the general requirements set forth in (a) (1) through (4) of this § 1-15.205-6, certain forms of compensation are subject to further requirements as specified in (b) through (j) of this § 1-15.205-6.

(b) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable. However, premiums for overtime, extra-pay shifts, and multishift work are allowable to the extent approved pursuant to § 1-12.102-4 or permitted pursuant to § 1-12.102-5.

(c) *Cash bonuses and incentive compensation.* Incentive compensation for management employees, cash bonuses, suggestion awards, safety awards, and incentive compensation based on production, cost reduction, or efficient performance, are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the contractor and the employees before the services were rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payment. (But see § 1-15.107.) Bonuses, awards, and incentive compensation when any of them are deferred are allowable to the extent provided in (f) below.

(d) *Bonuses and incentive compensation paid in stock.* Costs of bonuses and incentive compensation paid in the stock of the contractor or of an affiliate are allowable to the extent set forth in (c) above (including the incorporation of the principles of (f) below for deferred bonuses and incentive compensation), subject to the following additional requirements:

(1) Valuation placed on the stock transferred shall be the fair market value at the time of transfer, determined upon the most objective basis available; and

(2) Accruals for the cost of stock prior to the issuance of such stock to the employees shall be subject to adjustment according to the possibilities that the employees will not receive such stock and their interest in the accruals will be forfeited.

Such costs otherwise allowable are subject to adjustment according to the principles set forth in (f)(3) below. (But see § 1-15.107.)

(e) *Stock options.* The cost of options to employees to purchase stock of the contractor or of an affiliate is unallowable.

(f) *Deferred compensation.*

(1) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals. It includes (i) contributions to pension, annuity, stock bonus, and profit sharing plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation, whether paid in cash or in stock.

(2) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the contractor and employees before the services are rendered, or pursuant to an established plan followed by the contractor so consistently as to imply, in effect, an agreement to make such payments; and (iv) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service. (But see § 1-15.107.)

(3) In determining the cost of deferred compensation allowable under the contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the contractor; forfeitures which inure to the benefit of other employees covered by a deferred compensation plan with no reduction in the contractor's costs will not normally give rise to adjustment in contract costs. Adjustments for normal employee turnover shall be based on the contractor's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the contractor can demonstrate that his contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within (i) above, may be made the subject of agreement between the Government and the contractor either as to an equitable adjustment or a method of determining such adjustment.

(4) In determining whether deferred compensation is for services rendered during the contract period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as, requirements of continued employment, consultation after retirement, and covenants not to compete.

(g) *Fringe benefits.* Fringe benefits are allowances and services provided by the contractor to his employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental unemployment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the contractor.

(h) *Severance pay.* See § 1-15.205-39.

(i) *Training and education expenses.* See § 1-15.205-44.

(j) *Location allowances.* "Location allowances", sometimes called "supplemental pay" or "incentive pay", are allowable to the extent consistent with § 1-12.105.

§ 1-15-205-7 Contingencies.

(a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at a present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been incurred and recorded on the contractor's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as for example, terminations, a contingency factor may be recognized which is applicable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., anticipated costs of rejects and defective work; in such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(2) Those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; e.g., results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed in order to facilitate the negotiation of appropriate contractual coverage (see, for example, §§ 1-15.205-16, 1-15.205-20, and 1-15.205-39).

§ 1-15.205-8 Contributions and donations.

Contributions and donations are unallowable.

§ 1-15.205-9 Depreciation.

(a) Depreciation is a charge to current operations which distributes the

cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular contractor's operations as distinguished from physical life.

(b) Normal depreciation on a contractor's plant, equipment, and other capital facilities is an allowable element of contract cost; provided that the amount thereof is computed:

(1) Upon the property cost basis used by the contractor for Federal income tax purposes (see section 167 of the Internal Revenue Code of 1954); or

(2) In the case of nonprofit or tax-exempt organizations, upon a property cost basis which could have been used by the contractor for Federal income tax purposes, had such organizations been subject to the payment of income tax; and in either case

(3) By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954, as amended, including—

(i) The straight line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (i) above;

(iii) The sum of the years-digits method; and

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not, during the first two-thirds of the useful life of the property, exceed the total of such allowances which would have been used had such allowances been computed under the method described in (ii) above.

(c) Depreciation should usually be allocated to the contract and other work as an indirect cost. The amount of depreciation allowed in any accounting period may, consistent with the basic objectives set forth in (a) above, vary with volume of production or use of multi-shift operations.

(d) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

(e) No depreciation, rental, or use charge shall be allowed on the contractor's assets which have been fully depreciated when a substantial portion of such depreciation was on a basis that represented, in effect, a recovery thereof as a charge against Government contracts or subcontracts. Otherwise, a reasonable use charge may be agreed upon and allowed. (But see § 1–15.107.) In determining this charge, consideration should be given to cost, total estimated useful life at time of negotiation, and effect of any increased maintenance charges or decreased efficiency due to age.

§ 1–15.205–10 Employee morale, health, and welfare costs and credits.

Reasonable costs of health and welfare activities, such as house publications, health or first-aid clinics, recreational activities, and employee counseling services, incurred, in accordance with the contractor's established practice or custom in the industry or area, for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Income generated from any of these activities shall be credited to the costs thereof unless such income has been irrevocably set over to employee welfare organizations.

§ 1–15.205–11 Entertainment costs.

Costs of amusement, diversion, social activities and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable (but see §§ 1–15.205–10 and 1–15.205–43).

§ 1–15.205–12 Excess facility costs.

Costs of maintaining, repairing, and housing idle and excess contractor-owned facilities, except those reasonably necessary for standby purposes, are unallowable. Any costs of excess plant capacity reserved for defense mobilization production which are to be paid for by the Government should be the subject of a separate contract.

§ 1–15.205–13 Fines and penalties.

Costs of fines and penalties resulting from violations of, or failure of the contractor to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the contract, or instructions in writing from the contracting officer.

§ 1–15.205–14 Food service and dormitory costs and credits.

Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations or similar types of services for the contractor's employees at or near the contractor's facilities. Reasonable losses from the operation of such services are allowable if they are allocated to all activities served. Profits (except profits irrevocably set over to an employee welfare organization of the contractor in amounts reasonably useful for the benefit of the employees at the site or sites of contract performance) accruing to the contractor from the operation of these services, whether operated by the contractor or by a concessionaire, shall be treated as a credit, and allocated to all activities served.

§ 1–15.205–15 Fringe benefits.

(See § 1–15.205–6(g).)

§ 1–15.205–16 Insurance and indemnification.

(a) Insurance includes insurance which the contractor is required to carry, or which is approved, under the terms of the contract, and any other insurance which the contractor maintains in connection with the general conduct of his business.

(1) Costs of insurance required or approved, and maintained, pursuant to the contract, are allowable.

(2) Costs of other insurance maintained by the contractor in connection with the general conduct of his business are allowable subject to the following limitations:

(i) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(ii) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(iii) Costs of insurance or of any provision for a reserve covering the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance or reserve does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers, or other equivalent representatives, who has supervision or direction of (A) all or substantially all of the contractor's business, or (B) all or substantially all of the contractor's operations at any one plant or separate location in which the contract is being performed, or (C) a separate and complete industrial operation in connection with the performance of the contract;

(iv) Provisions for a reserve under an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks; and

(v) Costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation (see § 1–15.205–6).

(3) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the contract, except:

(i) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice, are allowable; and

(ii) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of doing business, are allowable.

(b) Indemnification includes securing the contractor against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Government is obligated to indemnify the contractor only to the extent expressly provided for in the contract, except as provided in (a)(3) above.

§ 1–15.205–17 Interest and other financial costs.

Interest on borrowings (however represented), bond discounts, costs of financing and refinancing operations, legal and professional fees paid in connection with the preparation of prospectuses, costs of preparation and issuance of stock rights, and costs related thereto, are unallowable except for interest as-

sessed by State or local taxing authorities under the conditions set forth in § 1–15.205–41. (But see § 1–15.205–24.)

§ 1–15.205–18 Labor relations costs.

Costs incurred in maintaining satisfactory relations between the contractor and his employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

§ 1–15.205–19 Losses on other contracts.

An excess of costs over income under any other contract (including the contractor's contributed portion under cost-sharing contracts), whether such other contract is of a supply, research and development, or other nature, is unallowable.

§ 1–15.205–20 Maintenance and repair costs.

(a) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see §1–15.205–9):

(1) Normal maintenance and repair costs are allowable;

(2) Extraordinary maintenance and repair costs are allowable, provided such are allocated to the periods to which applicable for purposes of determining contract costs. (But see § 1–15.107.)

(b) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the contractor's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

§ 1–15.205–21 Manufacturing and production engineering costs.

Costs of manufacturing and production engineering, including engineering activities in connection with the following, are allowable:

(a) Current manufacturing processes such as motion and time study, methods analysis, job analysis, and tool design and improvement; and

(b) Current production problems, such as materials analysis for production suitability and component design for purposes of simplifying production.

§ 1–15.205–22 Material costs.

(a) Material costs include the costs of such items as raw materials, parts, subassemblies, components, and manufacturing supplies, whether purchased outside or manufactured by the contractor, and may include such collateral items as inbound transportation and intransit insurance. In computing material costs consideration will be given to reasonable overruns, spoilage, or defective work (concerning correction of defective work, see the provisions of the contract relating to inspection and correction of defective work). These costs are allowable subject, however, to the provisions of (b) through (e) below.

(b) Costs of material shall be suitably adjusted for applicable portions of income and other credits, including available trade discounts, refunds, rebates, allowances, and cash discounts, and credits for scrap and salvage and material returned to vendors. Such income and other credits shall either be credited directly to the cost of the material involved or be allocated (as credits) to indirect costs. However, where the contractor can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, provided such adjustments relate to the period of performance of the contract.

(d) When the materials are purchased specifically for and identifiable solely with performance under a contract, the actual purchase cost thereof should be charged to the contract. If material is issued from stores, any generally recognized method of pricing such material is acceptable if that method is consistently applied and the results are equitable. When estimates of material costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Charges for materials, services, and supplies sold or transferred between plants, divisions, or organizations, under a common control, ordinarily shall be allowable to the extent of the lower of cost to the transferor or current market price. However, a departure from this basis is permissible where (1) the item is regularly manufactured and sold by the contractor through commercial channels, and (2) it is the contractor's long-established practice to price inter-organizational transfers at other than cost for commercial work; provided that the charge to the contract is not in excess of the transferor's sales price to his most favored customer for the same item in like quantity, or the current market price, whichever is lower.

§ 1–15.205–23 Organization costs.

Expenditures, such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers, in connection with (a) organization or reorganization of a business, or (b) raising capital, are unallowable.

§ 1–15.205–24 Other business expenses.

Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the contractor, cost of shareholders' meetings, normal proxy solicitations, preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies; and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

§ 1–15.205–25 Overtime, extra-pay shift and multi-shift premiums.

Premiums for overtime, extra-pay shifts, and multi-shift work are allowable to the extent approved pursuant to § 1–12.102–4, or permitted pursuant to § 1–12.102–5.

§ 1–15.205–26 Patent costs.

Costs of preparing disclosures, reports, and other documents required by the contract and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the contract relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See § 1–15.205–36.)

§ 1–15.205–27 Pension plans.

(See § 1–15.205–6.)

§ 1–15.205–28 Plant protection costs.

Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with security requirements, are allowable.

§ 1–15.205–29 Plant reconversion costs.

Plant reconversion costs are those incurred in the restoration or rehabilitation of the contractor's facilities to approximately the same condition existing immediately prior to the commencement of the contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other contracts.

§ 1–15.205–30 Precontract costs.

Precontract costs are those incurred prior to the effective date of the contract directly pursuant to the negotiation and in anticipation of the award of the contract where such incurrence is necessary to comply with the proposed contract delivery schedule. Such costs are allowable to the extent that they would have been allowable if incurred after the date of the contract (but see § 1–15.107).

§ 1–15.205–31 Professional service costs—legal, accounting, engineering, and other.

(a) Costs of professional services rendered by the members of a particular profession who are not employees of the contractor are allowable, subject to (b) and (c) below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. (But see § 1–15.205–23.)

(b) Factors to be considered in determining the allowability of costs in a particular case include:

(1) The past pattern of such costs, particularly in the years prior to the award of Government contracts;

(2) The impact of Government contracts on the contractor's business (i.e., what new problems have arisen);

(3) The nature and scope of managerial services expected of the contractor's own organizations; and

(4) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government contracts.

Retainer fees to be allowable must be reasonably supported by evidence of bona fide services available or rendered.

(c) Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, defense of antitrust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the contract.

§ 1–15.205–32 Profits and losses on disposition of plant, equipment, or other capital assets.

Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short or long term investments, shall be excluded in computing contract costs (but see § 1–15.205–9(b) as to basis for depreciation).

§ 1–15.205–33 Recruitment costs.

(a) Subject to (b), (c), and (d) of this § 1–15.205–33, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of help-wanted advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employment are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the contractor uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) In publications, costs of help-wanted advertising that (1) includes color, (2) includes advertising material for other than recruitment purposes, or (3) is excessive in size (taking into consideration recruitment purposes for which intended and normal business practices in this respect) are unallowable.

(c) Costs of (1) help-wanted advertising and (2) excessive salaries, fringe benefits, and special emoluments that have been offered to prospective employees, designed to "pirate" personnel from another Government contractor, or in excess of the standard practices in the industry, are unallowable.

(d) Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within twelve months after hire, the contractor shall be required to refund or credit such relocation costs to the Government.

§ 1–15.205–34 Rental costs (including sale and leaseback of facilities).

(a) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the amount which the contractor would have received had he owned the facilities.

(b) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance; provided that no part of such costs shall duplicate any other allowed costs.

(c) Unless otherwise specifically provided in the contract, rental costs specified in sale and leaseback agreements, incurred by contractors through selling plant facilities to investment organizations, such as insurance companies, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the contractor would have received had he retained legal title to the facilities.

(d) The allowability of rental costs under unexpired leases in connection with terminations is treated in §1–15.205–42(e).

§ 1–15.205–35 Research and development costs.

(a) Basic research, for the purpose of this Subpart 1–15.2, is that type of research which is directed toward increase of knowledge in science. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof. Applied research, for the purpose of this Subpart 1–15.2, consists of that type of effort which (1) normally follows basic research, but may not be severable from the related basic research, (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materials, processes, methods, devices, and techniques, and (3) attempts to "advance the state of the art." Applied research does not include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as hereinafter provided.

(b) "Development" is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(c) A contractor's independent research and development is that research and development which is not sponsored by a contract, grant, or other arrangement.

(d) A contractor's costs of independent research as defined in (a) and (c) above shall be allowable as indirect costs (subject to (h) below), provided they are allocated to all work of the contractor.

(e) Costs of contractor's independent development, as defined in (b) and (c) above (subject to (h) below), are allowable to the extent that such development is related to the product line for which the Government has contracts, provided the costs are reasonable in amount and are allocated as indirect costs to all work of the contractor on such product lines. In cases where a contractor's normal course of business does not involve production work, the cost of independent development is allowable to the extent that such development is related and allocated as an indirect cost to the field of effort of Government research and development contracts.

(f) Independent research and development costs shall include an amount for the absorption of their appropriate share of indirect and administrative costs, unless the contractor, in accordance with his accounting practices consistently applied, treats such costs otherwise.

(g) Research and development costs (including amounts capitalized), regardless of their nature, which were incurred in accounting periods prior to the award of a particular contract, are unallowable except where allowable as precontract costs (see § 1–15.205–30).

(h) The reasonableness of expenditures for independent research and development should be determined in light of all pertinent considerations such as previous contractor research and development activity, cost of past programs and changes in science and technology. Such expenditures should be pursuant to a broad planned program, which is reasonable in scope and well managed. Such expenditures (especially for development) should be scrutinized with great care in connection with contractors whose work is predominantly or substantially with the Government. Advance agreements as described in § 1–15.107 are particularly important in this situation. In recognition that cost sharing of the contractor's independent research and development program may provide motivation for more efficient accomplishment of such program, it is desirable in some cases that the Government bear less than an allocable share of the total cost of the program. Under these circumstances, the following are among the approaches which may be used as the basis for agreement: (1) Review of the contractor's proposed independent research and development program and agreement to accept the allocable costs of specific projects; (2) agreement on a

maximum dollar limitation of costs, an allocable portion of which will be accepted by the Government; (3) an agreement to accept the allocable share of a percentage of the contractor's planned research and development program.

§ 1–15.205–36 Royalties and other costs for use of patents.

(a) Royalties on a patent or amortization of the cost of acquiring by purchase a patent or rights thereto, necessary for the proper performance of the contract and applicable to contract products or processes, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent is considered to be unenforceable; or

(4) The patent is expired.

(b) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the contractor;

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government contract would be awarded; or

(3) Royalties paid under an agreement entered into after the award of the contract.

(c) In any case involving a patent formerly owned by the contractor, the amount of royalty allowed should not exceed the cost which would have been allowed had the contractor retained title thereto.

(d) See § 1–15.107, regarding advance understandings.

§ 1–15.205–37 Selling costs.

(a) Selling costs arise in the marketing of the contractor's products and include costs of sales promotions, negotiation, liaison between Government representatives and contractor's personnel, and other related activities.

(b) Selling costs are allowable to the extent they are reasonable and are allocable to Government business (but see §§ 1–15.107 and 1–15.205–1). Allocability of selling costs will be determined in the light of reasonable benefit to the Government arising from such activities as technical, consulting, demonstration, and other services which are for purposes such as application or adaptation of the contractor's products to Government use.

(c) Notwithstanding (b) above, salesmen's or agents' compensation, fees, commissions, percentages, or brokerage fees, which are contingent upon the award of contracts, are allowable only when paid to bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

§ 1–15.205–38 Service and warranty costs.

Such costs include those arising from fulfillment of any contractual obligation of a contractor to provide services, such as installation, training, correcting defects in the products, replacing defective parts, making refunds in the case of inadequate performance, etc. When not inconsistent with the terms of the contract, such service and warranty costs are allowable. However, care should be exercised to avoid duplication of the allowance as an element of both estimated product cost and risk.

§ 1–15.205–39 Severance pay.

(a) Severence pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by contractors to workers whose employment is being terminated. Costs of severence pay are allowable only to the extent that, in each case, it is required by (1) law, (2) employer-employee agreement, (3) established policy that constitutes, in effect, an implied agreement on the contractor's part, or (4) circumstance of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant; or, where the contractor provides for accrual of pay for normal severances such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the contractor's plant; and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event of occurrence.

§ 1–15.205–40 Special tooling costs.

The term "special tooling" means all jigs, dies, fixtures, molds, patterns, special taps, special gauges, special test equipment, other special equipment and manufacturing aids, and replacements thereof, acquired or manufactured by the contractor for use in the performance of a contract, which are of such a specialized nature that, without substantial modification or alteration, their use is limited to the production of such supplies or parts thereof, or the performance of such services, as are peculiar to the needs of the Government. The term does not include: (a) Items of tooling or equipment acquired by the contractor prior to the contract, or replacements thereof, whether or not altered or adapted for use in the performance of the contract, (b) consumable small tools, or (c) general or special machine tools, or similar capital items. The cost of special tooling, when acquired for and its usefulness is limited to one or more Government contracts, is allowable and shall be allocated to the specific Government contract or contracts for which acquired.

§ 1–15.205–41 Taxes.

(a) Taxes are certain charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes (including State and local income taxes) which the contractor is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable, except for:

(1) Federal income and excess profits taxes;

(2) Taxes in connection with financing, refinancing, or refunding operations (see § 1–15.205–17);

(3) Taxes from which exemptions are available to the contractor directly or available to the contractor based on an exemption afforded the Government except when the contracting officer determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government;

(4) Special assessments on land which represent capital improvements; and

(5) Taxes on any category of property which is used solely in connection with work other than on Government contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained; e.g., taxes on contractor-owned work in process which is used solely in connection with non-Government work should be allocated to such work and taxes on contractor-owned work-in-process inventory, and Government-owned work-in-process inventory when taxed, used solely in connection with Government work should be charged to such work.)

(b) Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable provided the contractor prior to payment of such taxes:

(1) Promptly requests instructions from the contracting officer concerning such taxes; and

(2) Takes all action directed by the contracting officer arising out of subparagraph (1) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment, or (ii) secure a refund of such taxes.

Reasonable costs of any such action undertaken by the contractor at the direction or with the concurrence of the contracting officer are allowable. Interest and penalties incurred by a contractor by reason of the nonpayment of any tax at the direction of the contracting officer or by reason of the failure of the contracting officer to assure timely

direction after prompt request therefor, are also allowable.

(c) Any refund of taxes, interest, or penalties, and any payment to the contractor of interest thereon, attributable to taxes, interest, or penalties which were allowed as contract costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to a contractor incident to a refund of tax, interest, or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the contractor had been reimbursed by the Government for the taxes, interest, or penalties.

§ 1–15.205–42 Termination costs.

Contract terminations generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the contract not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the remainder of this subpart in termination situations.

(a) *Common items.* The cost of items reasonably usable on the contractor's other work shall not be allowable unless the contractor submits evidence that he could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the contractor, the contracting officer should consider the contractor's plans and orders for current and scheduled production. Contemporaneous purchases of common items by the contractor shall be regarded as evidence that such items are reasonably usable on the contractor's other work. Any acceptance of common items as allocable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the contractor, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this subpart, except that any such costs continuing after termination due to the negligent or willful failure of the contractor to discontinue such costs shall be considered unallowable.

(c) *Initial costs.* Initial costs, including starting load and preparatory costs, are allowable, subject to the following:

(1) Starting load costs are costs of a nonrecurring nature arising in the early stages of production and not fully absorbed because of the termination. Such costs may include the cost of labor and material, and related overhead attributable to such factors as:

(i) Excessive spoilage resulting from inexperienced labor;

(ii) Idle time and subnormal production occasioned by testing and changing methods of processing;

(iii) Employee training; and

(iv) Unfamiliarity or lack of experience with the product, materials, manufacturing processes and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated contract, including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the contractor's books, segregation for settlement purposes shall be made from cost reports and schedules which reflect the high unit cost incurred during the early stages of the contract.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the contract immediately prior to termination; however, if the contract includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one contract shall not be allocated to other contracts.

(d) *Loss of useful value.* Loss of useful value of special tooling and special machinery and equipment is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the contractor;

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(3) The loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling and special machinery and equipment was acquired.

(e) *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(2) The contractor makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease.

(f) *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for—

(i) The preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract, and

(ii) The termination and settlement of subcontracts; and

(2) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(g) *Subcontractor claims.* Subcontractor claims, including the allocable portion of claims which are common to the contract and to other work of the contractor, are generally allowable.

§ 1–15.205–43 Trade, business, technical, and professional activity costs.

(a) *Memberships.* This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) *Subscriptions.* This item includes cost of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) *Meetings and conferences.* This item includes cost of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

§ 1–15.205–44 Training and educational costs.

(a) Costs of preparation and maintenance of a program of instruction at noncollege level, including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of bona fide employees, including training materials, textbooks, salaries or wages of trainees (excluding overtime compensation which might arise therefrom), and

(1) Salaries of the director of training and staff when the training program is conducted by the contractor; or

(2) Tuition and fees when the training is in an institution not operated by the contractor;

are allowable.

(b) Costs of part-time education, at an undergraduate or postgraduate college level, related to the job requirements of bona fide employees, including only:

(1) Training materials;

(2) Textbooks;

(3) Fees charged by the educational institution;

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution; and

(5) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of

classes or attendance at classes after regular working hours;

are allowable.

(c) Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with fulltime scientific and engineering education at a postgraduate (but not undergraduate) college level related to the job requirements of bona fide employees for a total period not to exceed one school year for each employee so trained, are allowable. In unusual cases where required by military technology, the period may be extended.

(d) Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the contractor for training purposes are allowable to the extent set forth in §§ 1-15.205-20, 1-15.205-9, and 1-15.205-34, respectively.

(e) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, or fellowships, are considered contributions and are unallowable.

§ 1-15.205-45 Transportation costs.

Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items (see § 1-15.205-22). Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

§ 1-15.205-46 Travel costs.

(a) Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by contractor personnel in a travel status while on official company business.

(b) Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used does not result in an unreasonable charge.

(c) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(d) Travel costs directly attributable to specific contract performance are allowable and may be charged to the contract in accordance with the principle of direct costing (see § 1-15.202).

(e) Necessary, reasonable costs of family movements and personnel movements of a special or mass nature are allowable, subject to allocation on the basis of work or time period benefited when appropriate. (But see § 1-15.107.)

§ 1-15.205-47 Economic planning costs.

(a) This category includes costs of generalized long-range management planning which is concerned with the future overall development of the contractor's business and which may take into account the eventual possibility of economic dislocations or fundamental alterations in those markets in which the contractor currently does business.

(b) Economic planning costs are allowable as indirect costs to be properly allocated. Research and development and engineering costs designed to lead to new products for sale to the general public are not allowable under this provision.

Subpart 1-15.3—Principles for Determining Applicable Costs Under Research Contracts With Educational Institutions

§ 1-15.301 General.

(a) It is the intent of these principles to provide executive agencies and educational institutions with a common basis for determining the allowable costs of research sponsored by the Federal Government. Application of these principles should enable such agencies and institutions to identify the allowable direct costs of such research, plus the allocable portion of the allowable indirect costs, less applicable credits. The tests of allowability of costs applied in these principles are reasonableness and allocability under consistently applied generally accepted cost accounting principles and practices; however, these provisions are subject to any limitations as to types or amounts of costs set forth in the research agreement.

(b) These principles do not attempt to identify the circumstances or dictate the extent of agency and institution participation in the financing of a particular research and development project, but rather are confined to the subject of cost determination. Arrangements concerning financial participation are properly the subject of negotiation between the contracting officer and the educational institution concerned.

(c) These principles should be applied to all Government sponsored research at an educational institution, including research conducted at locations other than the main campus of the institution.

(d) A negotiated fixed amount in lieu of indirect costs may be appropriate in certain instances for off-campus or segregated research projects where (1) research agreements are charged directly for the cost of many of their administrative or housekeeping services, or (2) the cost of benefits derived from an institution's indirect services cannot be readily determined by use of apportionment or allocation bases normally employed, or (3) the costs of apportioning and allocating expenses to research agreements are excessive. The negotiated amount should not exceed a conservative estimate of anticipated indirect costs.

§ 1-15.302 Definitions.

As used in this subpart, the following terms have the meanings stated below:

(a) "Research agreements" are agreements to perform Federally sponsored research through grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts for research.

(b) "Apportionment" is the process by which the indirect costs of the institution are assigned to (1) instruction and research, and (2) other institutional activities.

(c) "Allocation" is the process by which the indirect costs apportioned to instruction and research are distributed to research agreements.

(d) "Sponsoring agency" means the Federal agency for which the institution is performing research. Its use in this document does not imply a change in concept or intent for those agencies that have traditionally used a grant rather than a contractual instrument.

(e) "Original complement" means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings. If a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement.

(f) "Other institutional activities" means all organized activities of an institution not directly related to the instruction and research functions, such as residence halls, dining halls, student hospitals, student unions, intercollegiate athletics, book stores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, financial campaigns, and other similar activities or auxiliary enterprises. Also included under this definition is any category of cost treated as "unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's general overhead expenses are properly allocable.

§ 1-15.303 Direct costs.

Direct costs are those identified as having been specifically incurred to perform a particular research agreement. The general types of direct costs are:

(a) Direct salaries and wages, including employee benefit expenses and pen-

sion plan costs (see § 1–15.307) to the extent that they are consistently treated by the educational institution as a direct rather than an indirect cost, are those applicable directly to the performance of a research agreement. Such salaries and wages should be charged at the actual rates paid by the institution. Where professional staff paid on a salary basis work directly part time on a research agreement, current and reasonable estimates of time spent may be used in the absence of actual time records;

(b) Direct material costs include raw materials, purchased or supplied from stock, which are directly consumed or expended in the performance of a research agreement, or are otherwise applicable directly to a research agreement; and

(c) Other direct costs include other expenses related directly to a particular research agreement or project, including abnormal utility consumption. This may include services purchased from institution service operations, provided such are consistently treated as direct rather than indirect costs and are priced under a recognized method of costing or pricing designed to recover only actual costs and conforming to generally accepted cost accounting practices consistently followed by the institution. Purchases of equipment will be included under this heading only to the extent expressly provided for in the research agreement or approved pursuant to such agreement.

§ 1–15.304 Indirect costs.

Indirect costs are those which, because of their incurrence for common or joint objectives, are not readily subject to treatment as direct costs of research agreements or other activities. The general types of indirect costs are:

(a) General administration and general expenses are those incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any specific division of the institution. Employee benefit expenses and pension plan costs may be included in this category to the extent that they are consistently treated by the educational institution as an indirect rather than a direct cost;

(b) Research administration expenses are those which apply to research administered in whole or in part by a separate organization or an identifiable administrative unit. Examples of work relating to research which is sometimes performed under such organizational arrangement are: Contract administration, security, purchasing, personnel administration, and editing and publishing of research data;

(c) Operation and maintenance expenses are those incurred for operating and maintaining the institution's physical plant. They include expenses normally incurred by the institution for administration or supervision of the physical plant; janitorial service; repairs and ordinary or normal alterations of buildings, furniture, and equipment; care and maintenance of grounds; utilities; and other expenses customarily associated with the operation, maintenance, preservation, and protection of the physical plant;

(d) Library expenses are those incurred for direct operation of the library plus a use allowance for library books. The use allowance shall not exceed eight cents per volume per year;

(e) Use allowance is a means of compensation for the use of buildings, capital improvements, and equipment over and above the expenses for operation and maintenance when depreciation or other equivalent costs are not considered. The use allowance for buildings and improvements shall be computed at an annual rate not to exceed two percent of acquisition cost. The use allowance for equipment shall be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance shall be computed at an annual rate not exceeding ten percent of such cost. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate. Computation of the use allowance shall exclude the portion of the cost of buildings and equipment paid for out of Federal funds and the cost of grounds; and

(f) Indirect departmental expenses are those incurred for departmental administration, such as salaries of deans or heads of colleges, schools, departments or divisions, and related secretarial and other administrative expenses.

§ 1–15.305 Applicable costs.

(a) The cost of a research agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits.

(b) When any types of expense ordinarily treated as indirect costs are charged to a research agreement as direct costs, the costs of similar items applicable to other activities of the institution must be eliminated from indirect costs allocable to the research agreement.

(c) Where a particular understanding has been reached regarding specific items of cost to be reimbursed, the research agreement should clearly state such understanding.

(d) Section 1–15.307 provides standards to be applied in determining the allowability of certain items of cost and also identifies certain types of expenditures which relate solely to instruction; such costs of instruction, including applicable overhead, do not enter into the costs of research agreements either as direct costs or indirect costs.

§ 1–15.306 Determination of indirect costs.

§ 1–15.306–1 General.

(a) In determining the indirect costs applicable to Federally sponsored research agreements, the allowable indirect costs should first be apportioned equitably between (1) instruction and research activity and (2) other institutional activities, as provided in § 1–15.306–2.

(b) The amounts of indirect costs apportioned to instruction and research should then be allocated in an equitable manner to research agreements, as provided in § 1–15.306–3.

(c) Actual conditions must be taken into account in determining the most suitable method or methods to be used in the apportionment and allocation of indirect costs. The objective should be the selection of a method or methods which will distribute the indirect costs in a fair and equitable manner to the Government research and development work and other work of the institution, giving due consideration to the nature and extent of the use of the institution's facilities by research personnel, academic staff, students and other personnel or activities, and to the materiality of the amounts involved. The methods used should conform with generally accepted cost accounting practices, provide uniformity of treatment for like cost elements, be applied consistently, and produce equitable results. Any significant change, such as in the nature or extent of Government work or other activities sponsored or conducted by the institution, may require reconsideration of the methods previously in use to determine whether they continue to be equitable.

§ 1–15.306–2 Apportionment.

Indirect costs shall be apportioned as between instruction and research activities, and other institutional activities as defined in § 1–15.302(f). The apportionment shall be made as follows:

(a) General administration and general expenses, on the basis of total expenditures (exclusive of capital expenditures and use allowances), direct salaries and wages, or other bases appropriate in the circumstances;

(b) Operation and maintenance of the physical plant, if not separately costed, on the basis of total square or cubic footage of the buildings; and

(c) Other types of indirect costs normally do not require apportionment; where they do, an equitable basis for making the apportionment should be selected.

§ 1–15.306–3 Allocation.

(a) After determination of the total amount of indirect costs applicable to instruction and research activities, such indirect costs shall in turn be allocated between instruction activities and research agreements as described in (b), (c), (d), and (e) below.

(b) The following criteria should be used with such appropriate modifications as will under the circumstances produce reasonably equitable allocation of the indirect costs associated with research agreements:

(1) General administration and general expenses should normally be allocated on the basis of total expenditures

(exclusive of capital expenditures and use allowances) if equitable, direct salaries and wages, or other bases appropriate in the circumstances;

(2) Research administration expenses should be allocated to (i) applicable research agreements and (ii) other research benefiting therefrom on the basis of records reflecting the proportion fairly applicable to each or, in the absence of such records, on the basis of a reasonable estimate;

(3) Operation and maintenance expenses should be allocated on a basis that gives primary emphasis to space utilization. The amount allocated may be developed as follows:

(i) Where actual space and related cost records are or can readily be maintained without significant change in the accounting practices, the amount allocated to research agreements should be based on such data;

(ii) Where the space and related cost records maintained are not sufficient for purposes of (i) above, a reasonable estimate of the proportion of total space assigned to research agreements normally will suffice, and this proportion of operation and maintenance expense should be allocated to research agreements. Where it can be established that the cost of maintaining space assigned to research varies significantly from the cost of maintaining other space, appropriate weighting factors may be used to give effect to such variations;

(iii) Where more definitive information is not available, either of the following simplified techniques for determining space may be used, as most appropriate—

(A) Reduce the total space identified with instruction and research by the amount of space occupied by undergraduate students, including appropriate portions of classrooms and access and related space. Reduce by the same proportion the amount of maintenance and operation expense that has been apportioned to instruction and research, and then allocate to research agreements on the basis of the relationship that direct salaries and wages of research agreements bears to direct salaries and wages of instruction and research; or

(B) Prepare a reasonable estimate of the average gross space assigned per research worker, and extend to the equivalent annual number of research workers under research agreements. The resulting product should then be related to total space assigned to instruction and research in order to obtain the proportion of space utilized for research agreements. The resulting proportion should then be applied to operation and maintenance expense to obtain the amount allocable to research agreements; or

(C) Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including students;

(4) Library expenses should normally be allocated to research agreements on the basis of population including students and other users. Where appropriate, consideration may be given to weighting segments of the population figures as necessary to produce equitable results;

(5) Use allowance for buildings and equipment should, if depreciation or other equivalent costs are not considered, be computed in accordance with § 1-15.304(e). The cost of buildings and equipment used by "other institutional activities" (as defined in § 1-15.302(f)) should be excluded from any computation of use allowances. If available records permit, use allowances may be specifically allocated in whole or in part to research agreements. In the absence of such usable records, use allowance may be allocated to research agreements on the same basis as that used for allocating operation and maintenance expenses; and

(6) Indirect departmental expenses, as defined in § 1-15.304(f), which jointly benefit both research agreements and other activities should be allocated between research agreements administered or supervised by the department and other work of the department on any equitable basis, possibly direct salaries and wages, total direct expenditures, or approximate time so devoted. Where equitable results would be obtained, the distribution may be made on a composite base which would include all schools and departments.

(c) Indirect costs allocated to research agreements normally should be treated as a common pool. The costs in such common pool should then be distributed to individual research agreements benefiting therefrom on a single rate basis. This rate will be the percentage which the indirect cost pool is of direct salaries and wages of the applicable research agreements. If appropriate, total direct expenditures may be used rather than salaries and wages.

(d) It is recognized that in certain cases, due to the nature of the work, the facilities or personnel involved, or other considerations, the application of a single indirect expense rate on research agreements may produce inequitable results to the institution or to the Government. In such cases, it may be necessary to develop two or more indirect expense rates (1) by means of appropriate adjustment to the basic indirect expense rate developed through use of the common pool, or (2) by segregation of the indirect expenses allocated to research agreements into two or more indirect expense pools. In the latter case, the costs in each such pool will be distributed to the specific research agreements benefiting therefrom on the basis of direct wages and salaries or total direct expenditures, as appropriate. Examples of conditions which may justify the development of two or more pools of indirect expense are:

(1) Where the nature of a particular type of overhead cost requires a different basis of allocation to produce equitable results;

(2) Where a research agreement or group of agreements or the facility in which such agreement(s) is performed provides its own services to a significant degree, as may be in the case of a hospital or a segregated or off-campus facility;

(3) Where a research agreement requires significantly different degrees of indirect services from the institution. For example, such conditions may exist where: (i) Significant amounts of Government-owned facilities or equipment are provided in lieu of that normally furnished by the institution, (ii) a research agreement requires an unusual amount of power or other utilities, (iii) the cost of a special library provided in lieu of regular library services is reimbursed by the Government, or (iv) construction constitutes a significant portion of the work; and

(4) Where it is appropriate to associate certain costs more directly with the activities benefited, such as where the research work is performed on one campus of a multicampus university.

(e) Where research is separately administered, in whole or in part, or separate services are provided in lieu of those services normally provided by the institution, the cost of the normal institutional administration or other services replaced thereby shall be excluded from allocation to such research.

§ 1-15.306-4 Overhead determinations acceptable under special circumstances.

(a) Indirect costs may be claimed at a rate which is anticipated to be less than that which would otherwise be allowable with provision made in the research agreement for adjustment if actual costs subsequently prove to be less than the claimed rate.

(b) Where the total direct cost of Government-sponsored research and development work at an institution does not exceed $250,000 in a year, the use of the following abbreviated procedure may be acceptable in the determination of allowable indirect costs. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately available supporting information will be utilized as a basis for dividing total expenditures (exclusive of expenditures for capital items and unallowable costs, as defined in § 1-15.307, and expenditures for student aid and for annuity payments) between expenditures applicable to the indirect expense pool, and all other expenditures. The indirect expense pool shall be limited to the following categories of expense:

(1) General administration and general expenses, inclusive of allocable salaries and expenses of deans of schools and department heads. (Where the allocable portion of the salaries and expenses of deans of schools and department heads is not available, a maximum of twenty percent of the total of such salaries and expenses may be included in the indirect expense pool.);

(2) Operation and maintenance expenses; and

(3) Library operating expenses.

All categories of expense not specifically cited above will be grouped under "all other expenditures", including the expenses of research, education (including the items cited in (a) and (c) of § 1-15.307-2), and other institutional activities (as defined in § 1-15.302(f)).

The indirect expense rate will then be computed as the percentage relationship of the indirect expense pool to all other expenditures (as defined above). If the information required for this abbreviated procedure cannot be obtained from an analysis of the most recent annual financial report and immediately available supporting information, the regular procedure shall be used for the determination of indirect cost.

§ 1–15.307 General standards for selected items of cost.

§ 1–15.307–1 Purpose and applicability.

(a) This § 1–15.307 provides standards to be applied to the extent deemed practicable in determining the allowability of certain items of cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards should not imply that it is either allowable or unallowable; rather, determination as to allowability in such case should be based on the treatment or standards provided for similar or related items of cost.

(b) In case of discrepancy between the provisions of a specific research agreement and the applicable standards, the provisions of the research agreement should govern.

§ 1–15.307–2 Costs applicable to instruction.

Except as specifically noted, the following types of costs apply only to instruction and therefore do not enter into the costs of research agreements, either as direct costs or indirect costs, unless, notwithstanding § 1–15.305(d), specific provision is made therefor in the research agreement:

(a) Commencement and convocation costs;

(b) Scholarships, fellowships, tuition, and other forms of student aid costs. However, in certain cases such costs may be allocable in part to research agreements under the conditions set forth in § 1–15.307–3(ii); and

(c) Student services costs, including such activities as deans of students, administration of student affairs, registrar, placement offices, student advisers, student health and infirmary services, and such other activities as are identifiable with student services. However, in the case of students actually engaged in work under research agreements, a proportion of student service costs measured by the relationship between hours of work by students on such research work and total student hours including all research time may be allowed as a part of research administration expenses.

§ 1–15.307–3 Allowable and unallowable costs.

(a) *Advertising costs.* Advertising costs include the cost of advertising media and related technical and administrative costs. Only the following advertising costs are allowable: (1) Help-wanted advertising, and (2) other advertising necessary for the performance of the research agreement to the extent authorized.

(b) *Bad debts.* Bad debts including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs are unallowable.

(c) *Capital expenditures.* Capital expenditures are unallowable except as provided for in the research agreement. This includes costs of books, equipment and buildings, as well as repairs which materially increase the value or useful life of such equipment or buildings.

(d) *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when apportioned to all activities of the institution. Capital expenditures for civil defense purposes shall not be allowed, but a use allowance may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

(e) *Communication costs.* Communication costs including telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

(f) *Compensation for personal services.* Each institution shall maintain control over its salary and wage rates according to its established policy consistently applied, provided, however, that the excess of salary and wage rates paid to personnel working on Government research agreements over salary and wage rates paid to personnel working on the institution's departmental research or other research will not be allowed unless specifically provided in the agreement or approved by the contracting officer. This principle does not prohibit the charging of the full salary of any temporary employee in whose favor a salary differential exists solely by virtue of the nature of his employment in accordance with the regular practice of the institution concerned. Faculty members shall be considered as employed for the period represented by the sum of all semesters and other periods during which they are required to work under the practice of the institution concerned. (Example: Professor of X institution is required to work two semesters of 4½ months each, or a total of nine months out of the academic year. His compensation is $5,400.00. During the summer months, July, August, and September, he works full time on Government research projects in the institution laboratory. Unless the established practice of the institution relating to summer compensation, not based on Government contract experience, would result in a different computation, his compensation for that period, chargeable by the institution to the Government research agreement, will be $1,800.00, computed as follows: ($5,400.00 ÷9=$600.00; $600.00 multiplied by 3 =$1,800.00).)

(g) *Contingency provisions.* Contingency provisions to provide for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

(h) *Deans.* Deans of faculty and graduate schools, or their equivalents, including their staffs and related expenses are allowable.

(i) *Employee morale, health, and welfare costs and credits.* Employee morale, health and welfare costs and credits, such as house publications, health or first aid clinics and/or infirmaries, recreational activities, and employees' counseling services, incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs shall be equitably apportioned to all activities of the institution. Income generated from any of these activities shall be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organization.

(j) *Entertainment costs.* Entertainment costs including costs of amusement, social activities, entertainment, and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

(k) *Equipment and other facilities.* The cost of equipment or other facilities, including books purchased specifically for use on the project, are allowable where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

(l) *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the contracting officer.

(m) *Insurance and indemnification.* (1) Insurance includes those types of insurance which the institution is required to carry, or which is approved, under the terms of the research agreement, and any other insurance which the institution maintains in the general conduct of its activities. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise.

(2) Costs of insurance required or approved, and maintained, pursuant to the research agreement, are allowable.

(3) Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations:

(i) Types and extent and cost of coverage shall be in accordance with sound institutional practice;

(ii) Costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable

except to the extent that the Government shall have required or approved such costs;

(iii) Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks;

(iv) Costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted; and

(v) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except: (A) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable; and (B) minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of doing business, are allowable.

(n) *Interest costs.* Interest costs for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(o) *Investment counsel and staff costs.* Investment counsel and staff costs are unallowable.

(p) *Labor relations costs.* Labor relations costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

(q) *Losses on other research agreements or contracts.* Any excess of costs over income under any other research agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for overhead.

(r) *Maintenance and repair costs.* Maintenance and repair costs necessary for the upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

(s) *Material costs.* Material costs of purchased materials, supplies, and fabricated parts directly or indirectly related to the research agreement are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where Government-donated or furnished material is used in performing the research agreement, such material will be used without charge.

(t) *Memberships, subscriptions, and professional activity costs.*

(1) *Membership costs.* Membership costs of the institution's membership in civic, business, technical, and professional organizations are allowable.

(2) *Subscription costs.* Subscription costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable, excepting those obtained for the library for which a use allowance is made.

(3) *Meetings and conferences.* This item includes cost of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information. Such costs are allowable.

(u) *Patent costs.* Costs of preparing disclosures, reports, and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also (ff) below.)

(v) *Pension plan costs.* Pension plan costs are allowable if in accordance with the established policies of the institution, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the institution.

(w) *Plant security costs.* Plant security costs including wages, uniforms, and equipment of personnel engaged in plant protection, and necessary expenses to comply with Government security requirements, are allowable.

(x) *Preresearch agreement costs.* Preresearch agreement costs are those which are incurred prior to the effective date of the research agreement whether or not they would have been allowable thereunder if incurred after such date. Such costs are unallowable unless specifically set forth and identified in the research agreement.

(y) *Professional service costs—legal, accounting, engineering, and other.*

(1) Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable, subject to (2) and (3) below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

(2) Factors to be considered in determining the allowability of costs in a particular case include:

(i) The past pattern of such costs, particularly in the years prior to the award of Government research agreements;

(ii) The impact of Government research agreements on the institution's total activity;

(iii) The nature and scope of managerial services expected of the institution's own organization; and

(iv) Whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government research agreements.

(3) Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the research agreement.

(z) *Profits and losses on disposition of plant, equipment, or capital assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

(aa) *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential Government and non-Government research agreements or projects, including the development of engineering data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods shall be allocable in the current period the Government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

(bb) *Public information services costs.* Public information services costs such as news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

(cc) *Rearrangement and alteration costs.* Ordinary or normal rearrangement and alteration costs are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency concerned.

(dd) *Reconversion costs.* Reconversion costs are those incurred in the res-

toration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of Government research agreement work, fair wear and tear expected. Reconversion costs are allowable, only to the extent of the cost of removing Government property and the restoration or rehabilitation costs caused by such removal.

(ee) *Recruiting costs.* Recruiting costs such as "help-wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employment, are allowable. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are also allowable. Costs of special benefits or emoluments offered to prospective employees beyond recognized practices for recruiting such personnel are unallowable.

(ff) *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto, necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent has been adjudicated to be invalid or has been administratively determined to be invalid;

(3) The patent is considered to be unenforceable; or

(4) The patent has expired.

(gg) *Severance pay.* Severance pay is a payment, in addition to regular salaries and wages, by institutions to employees whose services have been terminated. Severance pay is allowable as a cost only to the extent that it is required by law, employer-employee agreement, established policy that constitutes in effect an implied agreement on the institution's part, or circumstances of the particular employment. Severance payments are divided into two categories as follows:

(1) Those due to normal, recurring turnover. The actual costs of such severance payments shall be regarded as expense applicable to the current fiscal year and equitably apportioned to the institution's activities during that period; and

(2) Those due to abnormal or mass terminations. Abnormal or mass severance pay is of such a conjectural nature that measurement of cost by means of an accrual will not achieve equity to both parties. Thus accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis.

(hh) *Special services costs.* Special services costs, such as general public relations activities, catalogs, and alumni activities, are unallowable.

(ii) *Staff benefits.* Staff benefits are allowances and services provided by the institution to its employees as compensation in addition to regular wages and salaries. Costs of such staff benefits are allowable and include vacations, holidays, sick leave, military leave, employee insurance, social security taxes, and workmen's compensation insurance. The payment of tuition or remission of tuition for employees and their families are allowable to the extent that such payments or remissions are made under established policies consistently applied.

(jj) *Taxes.* In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(1) Taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates; and

(2) Special assessments on land which represent capital improvements.

Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as research agreement costs, shall be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to an institution incident to a refund of tax, interest, and penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

(kk) *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be direct costed as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

(ll) *Travel costs.*

(1) Travel costs consist of transportation, lodging, subsistence, and incidental expenses.

(2) Travel costs incurred by institution personnel in a travel status while on specific research business are allowable.

(3) Travel costs incurred in the normal course of overall administration of the institution and applicable to the entire institution are allowable. Such costs shall be equitably apportioned to all work of the institution.

(4) Subsistence and lodging, including tips or similar incidental costs, are allowable either on an actual or per diem basis. The basis selected shall apply to an entire trip and not selected days of the trip.

(5) Costs of personnel movement of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

(mm) *Termination costs.*

(1) Contract termination generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this subpart in the case of contract termination.

(2) The cost of common items of material reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(3) If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this subpart, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be considered unacceptable.

(4) Loss of useful value of special tooling and special machinery and equipment is generally allowable, if:

(i) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution;

(ii) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and

(iii) The loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other Government contracts for which the special tooling and special machinery and equipment was acquired.

(5) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if:

(i) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and

(ii) The institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract, and of reasonable restoration required by the provisions of the lease.

(6) Settlement expenses including the following are generally allowable:

(i) Accounting, legal, clerical, and similar costs reasonably necessary for—

(A) The preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract; and

(B) The termination and settlement of subcontracts; and

(ii) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the contract.

(7) Subcontractor claims, including the allocable portion of claims which are common to the contract and to other work of the contractor, are generally allowable.

(nn) *Sabbatical leave costs.* Sabbatical leave costs, including leave of absence to employees for performance of graduate work or sabbatical study, travel, or research, are allowable as indirect costs of the period in which paid, provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs shall be allocated on an equitable basis among all appertaining activities of the institution.

Subpart 1–15.4—Construction Contracts

§ 1–15.401 Definition of construction contract.

The term "construction contract" as used in this subpart means any contract for the construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. It does not include a contract for the manufacturing, producing, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property, regardless of the terms of any such contract as to payment or title.

§ 1–15.402 General basis for determination of costs.

The total cost of a cost-reimbursement type contract for construction or for architect-engineer services related to construction is the sum of the allowable costs incident to the performance of the contract, less applicable income and other credits. The tests used in determining the allowability of costs also include (a) reasonableness and (b) any limitations as to types or amounts of cost items set forth in this Subpart 1–15.4 or otherwise included in the contract. Failure to mention any item of cost in this subpart is not intended to imply that it is either allowable or not allowable. Income and other credits arising out of operations under the contract, where the related cost was reimbursed or accepted as an allowable cost, will be credited to the Government.

§ 1–15.403 Examples of items of allowable costs.

Subject to the requirements of § 1–15.402 with respect to the general basis for determining allowability of costs, the following items of cost are considered allowable within the limitations indicated:

(a) Bonds and insurance, including self-insurance, to the extent authorized by the contracting officer;

(b) Camp operations (but see § 1–15.404(h));

(c) Freight, transportation, and material handling;

(d) Land and structures, temporary use thereof;

(e) Materials and supplies, including inspection, storage, salvage, and other usual expenses incident to the procurement and use thereof;

(f) Patents, purchased designs, and royalty payments, to the extent authorized by the contracting officer;

(g) Plant and equipment, purchase or rental thereof;

(h) Recruiting of personnel (including "help-wanted" advertising);

(i) Restoration and cleanup of site and facilities, as directed by the contracting officer;

(j) Structures and facilities of a temporary nature;

(k) Subcontracts;

(l) Taxes, fees or charges, except those imposed upon, by reason of, or measured by the contractor's fee;

(m) Traveling expenses, to the extent authorized by the contracting officer;

(n) Utility services, such as communication, power, gas, and water;

(o) Vacation, holiday, and severance pay, sick leave and military leave, to the extent required by law or specifically provided for elsewhere in the contract;

(p) Wages and salaries; and

(q) Pension and retirement plans in accordance with the interpretation set forth in § 1–15.406 and group health, accident, and life insurance plans (but see § 1–15.404 (b), (d), and (m)).

§ 1–15.404 Examples of items of unallowable costs.

The following items of costs are considered unallowable, except as indicated and then only subject to the requirements of § 1–15.402:

(a) Advertising (including advertising in trade or technical journals), except "help-wanted" advertising;

(b) Central office expenses of the contractor, such as supplies, equipment, rent, or any other expenses incident to its maintenance and operation, except to the extent authorized by the contracting officer;

(c) Commissions and bonuses (under whatever name) in connection with obtaining or negotiating for a Government contract;

(d) Compensation and traveling expenses of any officer or employee in the central office organization of the contractor, except to the extent authorized by the contracting officer;

(e) Contingency reserves;

(f) Contributions and donations;

(g) Dividend payments;

(h) Entertainment, except for on-site recreational activities for the contractor's employees as authorized by the contracting officer;

(i) Interest on borrowings (however represented), bond discount and expense, and financial charges;

(j) Legal, accounting, and consulting fees and related expenses, except to the extent authorized by the contracting officer;

(k) Loses on other contracts;

(l) Memberships in trade, business, and professional organizations;

(m) Premiums for insurance on the lives of directors, officers, proprietors, or other persons, where the contractor is the beneficiary directly or indirectly;

(n) Storage of contract records after completion of contract operations, irrespective of contractual or statutory requirements regarding the preservation of records; and

(o) Taxes, fees, or charges imposed upon, by reason of, or measured by the contractor's fee.

§ 1–15.405 Examples of subjects requiring special considerations.

The following examples are illustrative of subjects affecting cost which may require special consideration:

(a) Costs incurred incidental to work covered by the contract but prior to the execution of the contract, with specific identification of the types thereof and the period involved;

(b) Government-furnished property, general nature and extent;

(c) Indirect cost basis, (1) actual, (2) negotiated rate or amount, or (3) other;

(d) Insurance;

(e) Intracompany and intercompany transactions;

(f) Liability to third persons;

(g) Operation of restaurants and cafeterias;

(h) Overtime compensation (see § 1–12.102);

(i) Patents, purchased designs, and royalty payments;

(j) Personnel movement of a special or mass nature;

(k) Plant facilities fully depreciated or amortized on the contractor's books of account or acquired without cost (possible compensation for utilization in the form of a use or rental charge);

(l) Rearrangement or relocation of facilities or plant sites;

(m) Research programs of a general nature;

(n) Security measures of a special nature;

(o) Sharing of cost of research projects of the type which an educational or other nonprofit institution might undertake as a part of its own educational or research program;

(p) Subcontracting, nature and extent thereof and relation to fee or profit;

(q) Subsistence and housing of employees;

(r) Termination expenses;

(s) Tooling and equipment;

(t) Traveling expenses of a special or unusual nature; and

(u) Wages or salaries of partners or sole proprietors.

§ 1–15.406 Cost interpretation of pension and retirement plans.

(See § 1–15.403(q).)

(a) Costs of pension and retirement plans, including reasonable incidental benefits, such as disability, withdrawal, insurance or survivorship allowances which are deductible from taxable income in accordance with the Internal Revenue Code and the regulations of the Internal Revenue Service, are allowable except to the extent they are determined to be unreasonable or unallowable under any other provision of this cost interpretation. Costs of such plans established by nonprofit or other organizations not subject to payment of Federal income taxes are also allowable except to the extent they are determined to be unreasonable or unallowable under any other provision of this cost interpretation.

(b) Pension or retirement plans of a contractor which are subject to approval of the Internal Revenue Service must have been so approved before costs under the plans may be accepted as charges to Government contracts. Many plans of nonprofit or other tax exempt organizations are also reviewed and approved by the Internal Revenue Service—when not so reviewed and approved, each such plan will be reviewed, and approved or disapproved, by the procuring activity concerned, using, insofar as applicable, the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service. In any case where the Internal Revenue Service withdraws approval of a plan, approval of amounts allocated to contract costs will be withdrawn accordingly.

(c) The approval of a pension or retirement plan by the Internal Revenue Service will, as a general rule, be the only approval required by the procuring activity; however, the right is reserved to require submission of any plan for consideration by the procuring activity and to disapprove such plan in its entirety or any feature thereof whenever the circumstances in a particular case are deemed to warrant such action.

(d) Approval of a pension or retirement plan by the Internal Revenue Service or by the procuring activity does not imply that the cost thereof for any particular year will be allowable for apportionment to contract costs, except to the extent costs for that year meet all other requirements of the Internal Revenue Service as a deduction for income tax purposes, and are acceptable under the provisions of this cost interpretation and other provisions of this Part 1–15.

(e) Pension and retirement costs constitute a part of the total compensation by a contractor to any individual covered by the plan, and accordingly, are subject to the provisions of this Part 1–15 with respect to reasonableness of the total compensation paid to the individual for the services rendered.

(f) Where contributions to pensions or retirement plans are based on profits, provided that provisions of the Internal Revenue Code and regulations of the Internal Revenue Service have been met, the amount allowable for apportionment to contracts in any one year shall be the amount contributed to the pension trust(s) for that year, but not to exceed 15 percent of the total compensation otherwise paid or accrued in that year to the individuals covered under the plan(s).

(g) The allowability of costs of lump sum purchases of annuities or of periodic cash payments made to provide pension or retirement benefits for retiring or retired employees, other than incurred under approved pension or retirement plans, will be subject to consideration on an individual case basis.

(h) Credits which became available or are foreseeable must be taken into account in an equitable manner in determining pension and retirement costs subject to apportionment to a particular contract. In some instances, this may require adjustments to costs in anticipation of the realization of credits. For example, such action would normally be appropriate where contractors' organizations are substantially expanded for the performance of Government contracts and there is a reasonable expectation that, upon completion of the contracts, the services of practically all or a large number of the additional employees will be terminated with the result that contractors will benefit from contributions made on behalf of these employees, because such personnel will not acquire vested rights under the terms of the plan.

(i) In any current or future contract no cost allowance will be made which would duplicate, in whole or in part, an allowance previously made under a prior contract.

Subpart 1-15.5—[Reserved]

Subpart 1-15.6—Guidelines for Application in the Negotiation and Administration of Fixed-Price Type Contracts and in the Negotiation of Termination Settlements

§ 1-15.600 Scope of subpart.

This subpart provides guidance for the use of Subparts 1-15.2, 1-15.3, and 1-15.4 in (a) the evaluation of costs in pricing of negotiated fixed-price type contracts and subcontracts in those instances where such evaluation is required to establish prices for such contracts; (b) the negotiation of termination settlements; and (c) the negotiation of any adjustment in price required by the contract, such as issuance of change orders, a suspension of work for the convenience of the Government under an appropriate contract clause, and equitable adjustments under a Government-furnished property clause.

§ 1-15.601 Definition of fixed-price type contracts.

"Fixed-price type" contracts include, for purpose of this subpart, the following:

(a) Firm fixed-price contracts;

(b) Fixed-price contracts with escalation;

(c) Fixed-price contracts providing for the redetermination of price;

(d) Fixed-price incentive contracts;

(e) Non-cost-reimbursable portion of time and materials contracts; and

(f) Labor-hour contracts.

§ 1-15.602 Basic considerations.

(a) Under fixed-price type contracts, the negotiated price is the basis for payment to a contractor whereas allowable costs are the basis for reimbursement under cost-reimbursement type contracts. Accordingly, the policies and procedures of Subpart 1-3.8 are applicable in the negotiation of fixed-price type contracts. Cost and accounting data may provide guides for ascertaining fair compensation but are not rigid measures of it. Other types of data, criteria, or standards may furnish reliable guides to fair compensation. The ability to apply standards of business judgment as distinct from strict accounting principles is at the heart of a negotiated price or settlement.

(b) Among the different types of fixed-price type contracts, the need for consideration of costs varies considerably as indicated below:

(1) *Retrospective pricing and settlements.* In negotiating firm fixed prices or settlements for work which has been completed at the time of negotiation (e.g., final negotiations under fixed-price incentive contracts, redetermination of price after completion of the work, or negotiation of a settlement agreement under a contract terminated for the convenience of the Government), the treatment of costs is a major factor in arriving at the amount of the price or settlement. However, even in these situations, the finally agreed price or settlement may represent something other than the sum total of acceptable costs plus profit, since the final price accepted by each party does not necessarily reflect agreement on the evaluation of each element of cost, but rather a final resolution of all issues in the negotiation process.

(2) *Forward pricing.* The extent to which costs influence forward pricing varies greatly from case to case. In negotiations covering future work, actual costs cannot be known and the importance of cost estimates depends on the circumstances. The contracting officer must consider all the factors affecting the reasonableness of the total proposed price, such as the technical, production, or financial risk assumed, the complexity of work, the extent of competitive pricing, and the contractor's record, for efficiency, economy, and ingenuity, as well as available cost estimates. He must be free to bargain for a total price which equitably distributes the risks between the contractor and the Government and provides incentives for efficiency and cost reduction. In negotiating such a price, it is not possible to identify the treatment of specific cost elements since the bargaining is on a total price basis. Thus, while cost data is often a valuable aid, it will not control negotiation of prices for work to be performed, or a target price under an incentive contract.

§ 1-15.603 Cost principles and their use.

(a) When pursuant to § 1-15.602, costs are to be considered in the negotiation of fixed-price type contracts, the appropriate subpart of this Part 1-15 may be used, in conjunction with other pertinent considerations as set forth more fully in Subpart 1-3.8, as a guide in the evaluation of cost data required to establish a fair and reasonable price. In conjunction with Part 1-8, the appropriate subpart of this Part 1-15 may be used as a guide for the evaluation of cost information in the negotiation of termination settlements of fixed-price type contracts.

(b) In retrospective pricing, whenever an occasion arises in which acceptability of a specific item of cost becomes an issue, the appropriate part of this Part 1-15 will serve as a guide for the contracting officer in his conduct of negotiations.

(c) In applying this Part 1-15 to fixed-price contracts, contracting officers will (1) not be expected to negotiate agreement on every individual element of cost; and (2) be expected to use their judgment as to the degree of detail in which they consider the individual elements of cost in arriving at their evaluation of total cost, where such evaluation is appropriate. However, the negotiation record should fully substantiate and justify the reasoning leading to any negotiated price.

(d) In order to permit the proper evaluation of cost data submitted by contractors for use in negotiating prices, it may be necessary to obtain breakdowns or account analyses with respect to some cost items, particularly those whose treatment may be dependent upon special circumstances as stated in these principles. Contractors will be expected to be responsive to reasonable requests for data of this kind.

PART 1-16—PROCUREMENT FORMS

Sec.
1-16.000 Scope of part.

Subpart 1-16.1—Forms for Advertised Supply Contracts

1-16.100 Scope of subpart.
1-16.101 Forms prescribed.
1-16.102 Award documents.
1-16.103 Optional use.
1-16.104 Terms, conditions, and provisions.
1-16.105 Incorporation of Standard Form 32 by reference.
1-16.106 Die-cut stencils and reproducible masters.

Subpart 1-16.2—Forms for Negotiated Supply Contracts

1-16.200 Scope of subpart.
1-16.201 Request for Quotations (Standard Form 18).
1-16.201-1 Form prescribed.
1-16.201-2 Small procurements ($2,500 or less).
1-16.201-3 Procurements in excess of $2,500.
1-16.201-4 Legal effect of quotations.
1-16.201-5 Reproduction and availability of forms.

Subpart 1-16.3—Purchase and Delivery Order Forms

1-16.300 Scope of subpart.
1-16.301 Order-invoice-voucher forms.
1-16.301-1 Purchase Order-Invoice-Voucher (Standard Form 44).
1-16.301-2 Order-Invoice-Voucher (Standard Forms 147 and 148).

Subpart 1-16.4—Forms for Advertised Construction Contracts

1-16.400 Scope of subpart.
1-16.401 Forms prescribed.
1-16.402 Required use.
1-16.402-1 Contracts estimated not to exceed $2,000.
1-16.402-2 Contracts estimated to exceed $2,000 but not to exceed $10,000.
1-16.402-3 Contracts estimated to exceed $10,000.
1-16.402-4 Explanation of Standard Forms 19 and 19A.
1-16.403 Optional use.
1-16.404 Terms, conditions, and provisions.
1-16.405 Die-cut stencils and reproducible masters.
1-16.406 Covenant against contingent fees.

Subpart 1-16.5—[Reserved]
Subpart 1-16.6—[Reserved]
Subpart 1-16.7—[Reserved]

Subpart 1-16.8—Miscellaneous Forms

1-16.800 Scope of subpart.
1-16.801 Bond forms.
1-16.802 Bidder's Mailing List Application.
1-16.803 U.S. Government Architect-Engineer Questionnaire.
1-16.804 Report on procurement by civilian executive agencies.

Subpart 1-16.9—Illustrations of Forms

1-16.900 Scope of subpart.
1-16.901 Standard forms.
1-16.901-18 Standard Form 18: Request for Quotations.
1-16.901-19 Standard Form 19: Invitation, Bid, and Award (Construction, Alteration or Repair).
1-16.901-19A Standard Form 19A: Labor Standards Provisions Applicable to Contracts in excess of $2,000.
1-16.901-20 Standard Form 20: Invitation for Bids (Construction Contract).
1-16.901-21 Standard Form 21: Bid Form (Construction Contract).
1-16.901-22 Standard Form 22: Instructions to Bidders (Construction Contract).
1-16.901-23 Standard Form 23: Construction Contract.
1-16.901-23A Standard Form 23A: General Provisions (Construction Contract).
1-16.901-24 Standard Form 24: Bid Bond.
1-16.901-25 Standard Form 25: Performance Bond.
1-16.901-25A Standard Form 25A: Payment Bond.
1-16.901-25B Standard Form 25B: Continuation Sheet for Standard Forms 24, 25 and 25A.
1-16.901-26 Standard Form 26: Award (Supply Contract).
1-16.901-28 Standard Form 28: Affidavit of Individual Surety.
1-16.901-30 Standard Form 30: Invitation and Bid (Supply Contract).
1-16.901-31 Standard Form 31: Schedule (Supply Contract).
1-16.901-32 Standard Form 32: General Provisions (Supply Contract).
1-16.901-33 Standard Form 33: Invitation, Bid, and Award (Supply Contract).
1-16.901-34 Standard Form 34: Annual Bid Bond.
1-16.901-35 Standard Form 35: Annual Performance Bond.
1-16.901-36 Standard Form 36: Continuation Sheet (Supply Contract).
1-16.901-37 Standard Form 37: Report on Procurement by Civilian Executive Agencies.
1-16.901-40 Standard Form 40: Compliance Report (Nondiscrimination Provisions of U.S. Government Contracts).
1-16.901-40A Standard Form 40-A: Certificate of Submission of Current Compliance Report (Nondiscrimination Provisions of U.S. Government Contracts).
1-16.901-41 Standard Form 41: Compliance Report—Construction (Nondiscrimination Provisions of U.S. Government Contracts).
1-16.901-44 Standard Form 44: Purchase Order-Invoice-Voucher.
1-16.901-129 Standard Form 129: Bidder's Mailing List Application.
1-16.901-147 Order for Supplies or Services.
1-16.901-148 Order for Supplies or Services (continuation sheet).
1-16.901-251 Standard Form 251: U.S. Government Architect-Engineer Questionnaire.
1-16.902 [Reserved]
1-16.903 Department of Justice forms.
1-16.903-DJ1500 Form DJ-1500: Identical Bid Report for Procurement.

AUTHORITY: The provisions of this Part 1-16 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1–16.000 Scope of part.

This part prescribes forms for use by executive agencies in connection with the procurement of supplies, nonpersonal services, and construction.

Subpart 1–16.1—Forms for Advertised Supply Contracts

§ 1–16.100 Scope of subpart.

This subpart prescribes forms for use in procuring supplies by formal advertising. Illustrations of these forms are contained in Subpart 1–16.9.

§ 1–16.101 Forms prescribed.

The following standard forms are prescribed for use when entering into contracts for supplies, except as provided in § 1–16.103:

(a) Award (Supply Contract) (Standard Form 26, November 1949 edition).

(b) Invitation and Bid (Supply Contract) (Standard Form 30, October 1957 edition). Pending revision of this form, the provisions contained in § 1–2.201(a)(23), (a)(26), and (b)(13) shall be substituted for paragraphs 4, 10, and 6, respectively, of the Terms and Conditions of the Invitation for Bids on the back of the form.

(c) Schedule (Supply Contract) (Standard Form 31, November 1949 edition).

(d) General Provisions (Supply Contract) (Standard Form 32, June 1964 edition).

(e) Invitation, Bid, and Award (Supply Contract) (Standard Form 33, October 1957 edition). Pending revision of this form, the provisions contained in § 1–2.201(a)(23), (a)(26), and (b)(13) shall be substituted for paragraphs 4, 10, and 6, respectively, of the Terms and Conditions of the Invitation for Bids on the back of the form.

(f) Continuation Sheet (Supply Contract) (Standard Form 36, November 1949 edition).

Invitations may be issued and bids received on either Standard Form 30 (with Standard Form 31 attached) or Standard Form 33.

§ 1–16.102 Award documents.

When invitations for bids are issued on Standard Forms 30 and 31, award shall be made on Standard Form 26 or by other official written notice. When invitations are issued on Standard Form 33, award shall be made on Standard Form 33, on Standard Form 26, or by other official written notice. For example, award may be made on a purchase order form when award and related documentation requirements (such as furnishing delivery instructions or providing information copies of the award for required Government use) can thereby be accomplished simultaneously.

§ 1–16.103 Optional use.

(a) The forms prescribed in § 1–16.101 may, with appropriate adaptation (subject to § 1–1.009–2(d) of this chapter) be used, at the option of the agency, when entering into the following contracts:

(1) Contracts executed in foreign countries.

(2) Contracts for nonpersonal services, including utility services.

(3) Contracts for solid and liquid fuels and petroleum products.

(4) Contracts for construction, alteration, maintenance, or repair of ships, craft, boats, vessels, and other floating equipment, such as, but not limited to, floating dry docks, cranes and barges.

(5) Contracts for indefinite quantities which permit orders to be issued against such contracts by ordering offices of more than one Federal agency.

(b) The forms prescribed by § 1–16.101 may be used in negotiated procurement if appropriate changes are made in accordance with § 1–1.009–2(d). For example, the words "and shall be publicly opened" may be lined out.

§ 1–16.104 Terms, conditions, and provisions.

(a) Additional terms, conditions, and provisions considered by an agency to be essential to its procurement and not inconsistent with those contained in the forms prescribed in this Subpart 1–16.1 may be incorporated in invitations for bids in which these forms are used. Each executive agency shall review periodically such additional terms, conditions, and provisions which are in common use in such agency with a view to standardization of those in general use and elimination of unnecessary additions, and shall, from time to time, forward to the Administrator of General Services such additional terms, conditions, and provisions as are considered desirable for inclusion in the standard forms.

(b) In the interest of establishing and maintaining uniformity in Government contracts to the greatest extent feasible, deviations from the forms prescribed by this Subpart 1–16.1 shall be kept to a minimum. Deviations may be authorized in accordance with § 1–1.009 of this chapter.

§ 1–16.105 Incorporation of Standard Form 32 by reference.

Since Standard Form 32 is incorporated by reference in the Invitation for Bids portion of Standard Forms 30 and 33, it is not necessary to attach Standard Form 32 each time invitations for bids are issued to concerns regularly doing business with the Government. However, when a revised edition of Standard Form 32 is issued it is essential that agencies distribute copies thereof to all prospective bidders on their mailing lists, requesting that the form be retained for future reference. Additional copies of the form must be made available promptly on request. If desired, a single copy of Standard Form 32 may accompany the invitation for bids.

§ 1–16.106 Die-cut stencils and reproducible masters.

(a) The use of die-cut stencils or reproducible masters for printing Standard Forms 26, 30, 31, 33, and 36, is authorized (subject to the regulations of the Congressional Joint Committee on Printing) in order to eliminate excessive typing or overprinting in providing the necessary number of copies.

(b) The Terms and Conditions of the Invitation for Bids, which appear on the reverse of Standard Forms 30 and 33, are printed and stocked separately as Reverse of Standard Forms 30 and 33. These Terms and Conditions shall be used when reproducing Standard Forms 30 or 33 from die-cut stencils or reproducible masters, thereby eliminating the need for reproducing these standard terms each time an invitation for bids is prepared. The form may be ordered in the same manner as other standard forms.

Subpart 1–16.2—Forms for Negotiated Supply Contracts

§ 1–16.200 Scope of subpart.

This subpart prescribes forms for use in procuring supplies or services (excluding construction) by negotiation. Illustrations of these forms are contained in Subpart 1–16.9.

§ 1–16.201 Request for Quotations (Standard Form 18).

§ 1–16.201–1 Form prescribed.

Standard Form 18 (for illustration of form, see § 1–16.901–18) is prescribed to obtain price, delivery, and related information from suppliers in accordance with this section. Standard Form 36 (Continuation Sheet) may be used with the Request for Quotations form when additional space is needed.

§ 1–16.201–2 Small procurements ($2,500 or less).

When written quotations are solicited for small purchases ($2,500 or less) pursuant to § 1–3.603–1(d), Standard Form 18 shall be used, except in special cases where, for cogent reasons, agency needs require that firm offers be obtained.

§ 1–16.201–3 Procurement in excess of $2,500.

Standard Form 18 is authorized for use in negotiated procurements in excess of $2,500 where a written, informational quotation is desired. The form is particularly usable where it appears reasonably certain that the procurement will be consummated by (a) a fixed-price contract involving extensive negotiation, or (b) a cost-reimbursement type contract. The form may also be used, where appropriate, to obtain price information for planning purposes in either negotiated or advertised procurements, pursuant to § 1–1.314.

§ 1–16.201–4 Legal effect of quotation.

(a) A quotation submitted on Standard Form 18 is informational in character and is not to be construed as a legal offer which can be accepted by the Government to form a binding contract. Accordingly, issuance by the Government of a purchase order (or other document) pursuant to a supplier's quotation on Standard Form 18 does not constitute acceptance.

(b) Such purchase order is legally an offer by the Government to the supplier to buy certain goods or services upon specified terms and conditions. A contract comes into being when the supplier accepts the offer. Where appropriate, the supplier should be requested to indicate acceptance of the purchase order by notification to the Government, preferably in writing. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred in lieu of notification to the Government.

(c) Under the procedure of obtaining a quotation and issuing a purchase order, the Government may, at any time before acceptance occurs, withdraw, amend, or cancel its offer, and thereby minimize disputes and administrative costs. In such cases, a written notice should be given the supplier. Since substantial performance by the supplier may constitute an acceptance of the purchase order, a notice of its cancellation should not be issued on the assumption that the Government is not liable. Nonacceptance in fact should be verified.

§ 1–16.201–5 Reproduction and availability of forms.

Standard Form 18 is available from GSA stores depots. Special printing of the form to omit the vertical lines (for listing of supplies and services, unit, etc.) is authorized. Also, the use of reproducible masters, and make-up in carbon-interleaved pads or sets, is authorized.

Subpart 1–16.3—Purchase and Delivery Order Forms

§ 1–16.300 Scope of subpart.

This subpart prescribes forms for use when purchases are authorized or required to be made by the purchase order or imprest fund method, and delivery orders.

§ 1–16.301 Order-invoice-voucher forms.

§ 1–16.301–1 Purchase Order-Invoice-Voucher (Standard Form 44).

Standard Form 44 is authorized for use to accomplish small purchases in accordance with § 1–3.605–1.

§ 1–16.301–2 Order for Supplies or Services (Standard Forms 147 and 148).

Standard Form 147 (Order for Supplies or Services) and Standard Form 148 (Continuation Sheet) are prescribed for use in accordance with § 1–3.605–2.

Subpart 1–16.4—Forms for Advertised Construction Contracts

§ 1–16.400 Scope of subpart.

This subpart prescribes forms for use in procuring construction by formal advertising. Illustrations of these forms are contained in Subpart 1–16.9.

§ 1–16.401 Forms prescribed.

The following standard forms are prescribed for use in accordance with this Subpart 1–16.4:

(a) Invitation, Bid, and Award (Construction, Alteration or Repair) (Standard Form 19, January 1959 edition). Pending revision of this form, agencies shall (1) delete clauses 9 and 10 of the General Provisions on the reverse thereof; and (2) substitute the following small business representation for that in the Bid section of the form: "That he [ ] is, [ ] is not, a small business concern. (For this purpose, a small business concern is a business concern, including its affiliates, which (a) is independently owned and operated, (b) is not dominant in the field of operation in which it is bidding on Government contracts, and (c) had average annual receipts for the preceding three fiscal years not exceeding $7,500,000. For additional information see governing regulations of the Small Business Administration.)"

(b) Labor Standard Provisions—Applicable to Contracts in Excess of $2,000 (Standard Form 19A, June 1964 edition).

(c) Invitation for Bids (Construction Contract) (Standard Form 20, January 1961 edition).

(d) Bid Form (Construction Contract) (Standard Form 21, June 1964 edition).

(e) Instructions to Bidders (Construction Contract) (Standard Form 22, June 1964 edition).

(f) Construction Contract (Standard Form 23, January 1961 edition).

(g) General Provisions (Construction Contract) (Standard Form 23A, June 1964 edition).

§ 1–16.402 Required use.

The forms prescribed by § 1–16.401 shall be used for fixed price contracts, entered into pursuant to formal advertising, for construction (including alteration or repair) of public buildings or works, except for: contracts for the construction, alteration, or repair of vessels; and contacts for construction, alteration, or repair work in foreign countries. Detemination as to the form or forms to be used in each instance shall be made in accodance with this § 1–16.402.

§ 1–16.402–1 Contracts estimated not to exceed $2,000.

Standard Form 19 shall be used for contracts estimated not to exceed $2,000. Standard Form 22 also may be used.

§ 1–16.402–2 Contracts estimated to exceed $2,000 but not to exceed $10,000.

Standard Forms 19 and 19A shall be used for contracts estimated to exceed $2,000 but not to exceed $10,000. Standard Form 22 also may be used.

(a) The following language shall be inserted in the space provided in the Bid portion of Standard Form 19 prior to issuance of the invitation:

The undersigned further agrees, if this bid exceeds $2,000, TO COMPLY with the Labor Standards Provisions Applicable to Contracts in Excess of $2,000 (Standard Form 19A); TO PAY not less than the minimum hourly rates of wages set forth in the specifications; and TO FURNISH a performance bond in an amount equal to 100 percent and a payment bond in an amount equal to 50 percent of the contract price with surety or sureties acceptable to the Government.

(b) In all cases where the provision set forth in § 1–16.402–2(a) is inserted, the officer awarding the contract shall include in the specifications the appropriate wage rate determination of the Secretary of Labor. It will be noted that both the provision and Standard Form 19A are clearly inapplicable unless the bid exceeds $2,000.

§ 1–16.402–3 Contracts estimated to exceed $10,000.

Standard Forms 19A, 20, 21, 22, 23, and 23A shall be used for contracts estimated to exceed $10,000.

§ 1–16.402–4 Explanation of Standard Forms 19 and 19A.

(a) Standard Form 19 (Invitation, Bid, and Award) provides a single sheet form on which bids may be solicited, submitted, and accepted. The General Provisions on the reverse are adequate for contracts of $2,000 or less and become adequate for contracts in excess of that amount when Standard Form 19A is added.

(b) Whenever the Government's estimate indicates that the low bid will, or may, exceed $2,000, the language prescribed in § 1–16.402–2(a) shall be inserted in the Bid portion of Standard Form 19; Standard Form 19A shall be attached; and the appropriate wage rate determination of the Secretary of Labor shall be incorporated in the specifications. In cases where the Government's estimate, though less than $10,000, indicates the low bid may exceed that amount, the representation required by § 1–12.805–4(e) and the clause set forth in § 1–12.803–2 shall also be incorporated.

§ 1–16.403 Optional use.

Use of the forms prescribed in § 1–16.401 for negotiated contracts is optional. However, in the interest of uniformity, it is recommended that these forms be used (within the areas outlined in §§ 1–16.402–1, 1–16.402–2, and 1–16.402–3) for contracts entered into on the basis of competitive bids but which are termed negotiated contracts because the requirements of formal advertising are not fully met. When used for negotiated contracts, the forms will be adapted as required by agency procedures (e.g., the requirement that bids be "sealed" and "publicly opened" may be lined out).

§ 1–16.404 Terms, conditions, and provisions.

(a) Additional terms, conditions, and provisions considered by any agency to be essential to its contractual relationships and not inconsistent with those contained in the forms prescribed in this Subpart 1–16.4 may be incorporated in invitations for bids in which these forms are used by so providing in invitations for bids in the Alterations paragraph of Standard Form 23, in the schedule, or in the specifications, as appropriate, in accordance with agency implementing instructions. Each executive agency shall review periodically such additional terms, conditions, and provisions which are in common use in such agency with a view to standardization of those in general use and elimination of unnecessary additions, and shall, from time to time, forward to the Administrator of General Services such additional terms, conditions, and provisions as are considered desirable for inclusion in the standard forms.

(b) In the interest of establishing and maintaining uniformity in Government contracts to the greatest extent feasible, deviations from the forms prescribed in this Subpart 1–16.4 shall be kept to a minimum. Deviations may be authorized in accordance with § 1–1.009 of this chapter. When a deviation is authorized, changes shall be made in invitations for bids, in the Alterations paragraph of Standard Form 23, in the schedule, or in the specifications, as appropriate, in accordance with agency implementing instructions.

(c) The language of § 1–16.404(a) shall not be construed to authorize the use with Standard Form 19 of clauses which appear in Standard Form 23A and which were condensed or omitted in the development of Standard Form 19 in the interests of simplification and uniformity. Where such use is deemed essential, the matter shall be handled as a deviation as provided in § 1–16.404(b).

(d) Clause 3 (Disputes) of Standard Form 19 may be altered, by appropriate provision in addenda to the form, in the schedule, or in the specifications, as appropriate, in accordance with agency implementing instructions, to define "head of the Federal agency" or to provide for an intermediate appeal board procedure.

(e) During periods of national emergency, agencies may, with the prior approval of the Administrator of General Services, amend paragraph (d) of Clause 5 (Termination for Default—Damages for Delay—Time Extensions) of Standard Form 23A by deleting the words "unforeseeable causes" in the two places where they appear in the first sentence, and substituting therefor the words, "causes, other than normal weather,".

§ 1–16.405 Die-cut stencils and reproducible masters.

(a) The use of die-cut stencils or reproducible masters for printing Standard Forms 19, 20, and 21 is authorized (subject to the regulations of the Congressional Joint Committee on Printing) in order to eliminate excessive typing or overprinting in providing the necessary number of copies. Additional wording required by any agency on any of its invitations for bids and bid forms may be preprinted on the die-cut stencils or reproducible masters, if desired. However, the sequence and wording of the

items appearing on the prescribed forms shall not be altered.

(b) The General Provisions which appear on the reverse of Standard Form 19 are printed on paper suitable for reproduction purposes, and stocked separately as Reverse of Standard Form 19. In order to simplify the reproduction process, this form shall be used when printing Standard Form 19 from die-cut stencils or reproducible masters, thereby eliminating the need for reproducing these standard terms each time an invitation for bids is prepared. It may be ordered in the same manner as other standard forms.

(c) Agencies using die-cut stencils or reproducible masters for the face of Standard Form 21 are further authorized to use the following language in lieu of the language appearing at the bottom of the face of the form if it better suits their administrative requirements:

and agrees that, upon written notice that a preliminary examination of the bids indicates that he will be the successful bidder, he will within ------ calendar days (unless a longer period is allowed) after receipt of the prescribed forms, execute Standard Form 23, Construction Contract, and give performance bond and payment bond on Government standard forms, if these forms are required, with good and sufficient sureties: *Provided,* That contract and bond forms executed by the bidder prior to award of the contract will become effective only if his bid actually is accepted within the time established herein.

§ 1–16.406 Covenant against contingent fees.

Whenever Standard Form 19 is used, in accordance with this Subpart 1–16.4, for formally advertised contracts, the requirement of § 1–1.503, for inclusion of the Covenant against Contingent Fees clause, shall be inapplicable.

Subpart 1–16.5—[Reserved]

Subpart 1–16.6—[Reserved]

Subpart 1–16.7—[Reserved]

Subpart 1–16.8—Miscellaneous Forms

§ 1–16.800 Scope of subpart.

This subpart prescribes miscellaneous forms, other than procurement contract forms, for use in connection with the procurement of supplies and services. Illustrations of these forms are contained in Subpart 1–16.9.

§ 1–16.801 Bond forms.

(a) The following standard forms shall be used, except in foreign countries, when a bid, performance, or payment bond, or in individual surety is required:

(1) Bid Bond (Standard Form 24, June 1964 edition).

(2) Performance Bond (Standard Form 25, June 1964 edition).

(3) Payment Bond (Standard Form 25A, June 1964 edition).

(4) Continuation Sheet (For Standard Forms 24, 25 and 25A), (Standard Form 25B, June 1964 edition).

(5) Affidavit of Individual Surety (Standard Form 28, November 1950 edition).

(6) Annual Bid Bond (Standard Form 34, June 1964 edition).

(7) Annual Performance Bond (Standard Form 35, June 1964 edition).

(b) The bond forms shall be used as indicated in the Instruction portion of each form and implementing agency regulations shall be consistent therewith.

§ 1–16.802 Bidder's Mailing List Application.

Standard Form 129 (Bidder's Mailing List Application) is prescribed for use in connection with the establishment and maintenance of bidders mailing lists in accordance with § 1–2.205. Supplemental information, where required, may be obtained in accordance with agency procedures.

§ 1–16.803 U.S. Government Architect-Engineer Questionnaire.

(a) The U.S. Government Architect-Engineer Questionnaire (Standard Form 251, June 1961 edition) is designed to provide for uniform presentation, by architectural and/or engineering firms, of information as to their professional qualifications. This form shall be used, in lieu of any other Government form, whenever an agency desires to obtain such information for use in contracting for architectural and/or engineering services related to construction, alteration, or repair of buildings, bridges, roads, or other kinds of real property. Services related to construction include master planning, engineering studies, investigations, development of the design, preparation of plans and specifications, and inspection and supervision of work performed during the construction period.

(b) Use of the form prescribed in paragraph (a) of this section is not required in the procurement of architectural and/or engineering services related to construction, alteration, repair, processing or assembling of vessels, aircraft, or other kinds of personal property.

§ 1–16.804 Report on procurement by civilian executive agencies.

(a) *Agencies required to report.* Each civilian executive agency shall report its procurement to the General Services Administration (1) for the agency as a whole and (2) for each bureau or comparable major organizational unit of the agency. When procurement is performed by one agency for another, the agency doing the procurement shall report the transaction. Agencies normally undertaking procurement, but having no reportable procurement during any report period, shall submit negative reports.

(b) *Form prescribed.* Standard Form 37, Report on Procurement by Civilian Executive Agencies (June 1961 edition), is prescribed for use when reporting procurement in accordance with this section.

(c) *Preparation of report.* Except for the procurements excluded in paragraph (d) of this section, the report shall include the dollar amount of all types of commitments which obligate the Government to an expenditure of funds for property and services (including maintenance, repair, and construction of buildings, roads, etc.; and research and development). Instructions for filling in Standard Form 37 are stated on the form (see § 1–16.901–37).

(d) *Procurements to be excluded from the report.* Exclude from the report procurements:

(1) Which are $100 or less.

(2) By use of imprest funds (petty cash) and credit cards.

(3) At stations or offices for which total annual transactions, of the types covered by this report, are less than $2,500.

(4) From Federal sources of supply, such as: District of Columbia Government, Federal Prison Industries, Inc., Government Printing Office, General Services Administration (stores depots, fuel yard, consolidated and special purchasing service, repair shops and furniture rehabilitation service, and excess property).

(5) From educational and nonprofit institutions.

(6) Of blind-made products under the Act of June 25, 1938 (41 U.S.C. 46–48).

(7) By activities outside the United States, and from foreign contractors.

(8) Of transportation and public utilities services.

(9) Of land and easements; leasing of space; acquisition of property by foreclosure.

(10) Under the Defense Production Act of 1950, as amended.

(11) For price support, grants to farmers, or stabilization; of agricultural commodities for transfer to foreign governments or for foreign aid, relief, or rehabilitation; and under section 6 of the Farm Credit Act of 1937, as amended (12 U.S.C. 640*l*).

(e) *Frequency and due date.* Reports shall be prepared semiannually to cover the periods January 1 through June 30, and July 1 through December 31, of each year, and shall be submitted in an original only, within 30 workdays after the close of the period. Reports shall be addressed to the General Services Administration, Office of Finance and Administration, General Services Building, Washington, D.C., 20405.

Subpart 1–16.9—Illustrations of Forms

§ 1–16.900 Scope of subpart.

This subpart contains illustrations of forms used in procurement.

§ 1–16.901 Standard forms.

The standard forms are illustrated in this section to show their text, format, and arrangement and to provide a ready source of reference. The subsection numbers in this section correspond with the standard form numbers. Thus, in subsection 33 of this section 1–16.901 appears Standard Form 33. These forms may be inspected at General Services Administration regional offices and at most Government procurement activities, and, generally, are available for sale from the Superintendent of Documents, Government Printing Office, Washington, D.C., 20402.

§ 1–16.901–18 Standard Form 18: Request for Quotations.

STANDARD FORM 18, JUNE 1964
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.201

REQUEST FOR QUOTATIONS | THIS IS NOT AN ORDER

REQUEST NO.	DATE ISSUED	SHEET NO.	NUMBER OF SHEETS
		1	

ISSUED BY

FOR INFORMATION CALL:

DELIVERY (*Check one*)
☐ F.O.B. DESTINATION
☐ OTHER (*See Supplies or Services*)

REQUISITION NO./PURCHASE AUTHORITY NO.

REQUIRED DELIVERY DATE(S)

Please furnish quotations in to the above office on or before the close of business (date)
Supplies are of domestic origin unless otherwise indicated by quoter. The Government reserves the right to consider quotations or modifications thereof received after the date indicated should such action be in the interest of the Government. This is a request for information and quotations furnished are not offers. If you are unable to quote, please so indicate on this form and return it. This request does not commit the Government to pay any costs incurred in the preparation or the submission of this quotation, or to procure or contract for supplies or services.

TO:

DESTINATION (*Consignee and address*)

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY	UNIT	UNIT PRICE	AMOUNT

SPECIMEN

Prices quoted include applicable Federal, State, and local taxes.

Discounts for prompt payment will be allowed as follows: _____% 10 calendar days; _____% 20 calendar days; _____% 30 calendar days.

Quoter Represents: (*Check appropriate boxes*)

(1) That it ☐ is, ☐ is not, a small business concern. Generally, a small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is bidding on Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the Small Business Administration. (*See Code of Federal Regulations, Title 13, Part 121, as amended, which contains the detailed definition and related procedures.*) If quoter is a small business concern and is not the manufacturer of the supplies quoted on, it also represents that all supplies quoted on ☐ will, ☐ will not, be manufactured or produced by a small business concern in the United States, its Possessions, or Puerto Rico.

(2) That it is a ☐ regular dealer in, ☐ manufacturer of, the supplies quoted upon.

(3) That it operates as an ☐ individual, ☐ partnership, ☐ corporation, incorporated in the State of _____

NAME OF QUOTER (*Include address if different from above*)	SIGNATURE OF PERSON AUTHORIZED TO SIGN QUOTATION	DATE
	TYPE OR PRINT SIGNER'S NAME AND TITLE	TELEPHONE NO.

§ 1–16.901–19 Standard Form 19: Invitation, Bid, and Award (Construction, Alteration or Repair).

(a) Page 1 of Standard Form 19.

STANDARD FORM 19
JANUARY 1959 EDITION
GEN. SERV. ADMIN.
FED. PROC. REG.
(41 CFR) 1-16.401

INVITATION, BID, AND AWARD
(Construction, Alteration or Repair)

REFERENCE
(*Include in correspondence*)

INVITATION FOR BIDS

ISSUING OFFICE

DATE ISSUED:

BID RECEIVING OFFICE

INFORMATION REGARDING BIDDING MATERIAL MAY BE OBTAINED FROM THE ISSUING OFFICE

SEALED BIDS in covering work described in specifications, schedules, drawings and conditions entitled and dated as follows:

will be received at the Bid Receiving Office until _____ (*Time*) _____ (*Date*)
and then publicly opened.
Sealed envelopes containing bids shall be addressed to the Bid Receiving Office and shall be marked to show: Bidder's Name and Address; Reference ; Time and Date of Opening;

BID (*This Section to be completed by Bidder*) → DATE BID SUBMITTED:

The undersigned agrees, if this bid is accepted within calendar days after date of opening, to complete all work specified in strict accordance with the above-identified documents and the General Provisions on the reverse hereof, within calendar days after receipt of notice to proceed, for the following amount _____
including all applicable Federal, State, and local taxes.

BIDDER REPRESENTS: (*Check appropriate boxes*)

1. That he ☐ is, ☐ is not, a small business concern. For this purpose, a small business concern is one that (a) is independently owned and operated, (b) is not dominant in its field of operation, and (c) with affiliates, had average annual receipts for the preceding three years of $5,000,000.00 or less. (*See Code of Federal Regulations, Title 13, Part 121, as amended, for additional information.*)
2. That he operates as an ☐ individual, ☐ partnership, ☐ corporation, incorporated in the State of _____

SPECIMEN

NAME AND ADDRESS OF BIDDER (*Street, city, county and State. Type or print.*)	SIGNATURE OF PERSON AUTHORIZED TO SIGN THIS BID →
	TYPE OR PRINT SIGNER'S NAME AND TITLE

AWARD (*This Section for Government only*) DATE OF AWARD:

The above Bid is accepted in the amount of $
☐ You are directed to proceed with the work upon receipt of this Award.
☐ Notice to proceed will be issued upon receipt of acceptable payment and performance bonds.

THE UNITED STATES OF AMERICA

BY _____
(*Contracting Officer*)

_____
(*Title*)

(b) Page 2 of Standard Form 19.

GENERAL PROVISIONS

1. CHANGES AND CHANGED CONDITIONS.—
(a) The Contracting Officer may, in writing, order changes in the drawings and specifications within the general scope of the contract. *(b)* The Contractor shall, before proceeding further, notify the Contracting Officer in writing of subsurface or latent conditions differing materially from those indicated in this contract or unknown unusual physical conditions at the site.
(c) If changes under *(a)* or conditions under *(b)* increase or decrease the cost of, or time required for, performing the work, upon assertion of a claim by the Contractor before final settlement of the contract, a written equitable adjustment shall be made; except that no adjustment under *(b)* shall be made unless the notice required therein was given or unless the Contracting Officer determines the facts justify its waiver. If the adjustment cannot be agreed upon, the dispute shall be decided pursuant to Clause 3.

2. TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS.—
(a) If the Contractor does not prosecute the work so as to insure completion, or fails to complete it, within the time specified, the Government may, by written notice to the Contractor, terminate his right to proceed. Thereafter, the Government may have the work completed and the Contractor shall be liable for any resulting excess cost to the Government. If the Government does not terminate the Contractor's right to proceed, he shall continue the work and shall be liable to the Government for any actual damages occasioned by such delay unless liquidated damages are stipulated.
(b) The Contractor's right to proceed shall not be terminated nor the Contractor charged with actual or liquidated damages under *(a)* above because of any delays in completion of the work due to causes other than normal weather, beyond his control and without his fault or negligence, including but not restricted to, acts of God, acts of the public enemy, acts of the Government (in either its sovereign or contractual capacity), acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather, or delays of subcontractors or suppliers due to causes beyond their control and without their fault or negligence: *Provided*, That the Contractor shall within 10 days from the beginning of any such delay, unless the Contracting Officer shall grant a further period of time prior to the date of final settlement of the contract, notify the Contracting Officer in writing of the causes of delay. The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when in his judgment the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties hereto, subject only to appeal as provided in Clause 3 hereof.

3. DISPUTES.—
Any dispute concerning a question of fact arising under this contract, not disposed of by agreement, shall be decided by the Contracting Officer, who shall reduce his decision to writing and furnish a signed copy to the Contractor. Such decision shall be final and conclusive unless, within 30 days from the date of receipt thereof, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal, addressed to the head of the Federal agency. The Contractor shall be afforded an opportunity to be heard and to offer evidence. The decision of the head of the Federal agency or his authorized representative, shall be final and conclusive unless fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

4. RESPONSIBILITY OF CONTRACTOR.—
At his own expense the Contractor shall: *(a)* obtain all required licenses and permits; *(b)* provide competent superintendence; *(c)* take precautions necessary to protect persons or property against injury or damage and be responsible for any such injury or damage that occurs as a result of his fault or negligence; *(d)* perform the work without unnecessarily interfering with other contractors' work or Government activities; *(e)* be responsible for all damage to work performed and materials delivered (including Government-furnished items), until completion and final acceptance.

5. MATERIALS AND WORKMANSHIP.—
The work shall be under the general direction and subject to the inspection of the Contracting Officer or his duly authorized representative who may require the Contractor to correct defective workmanship and materials without cost to the Government.

6. PAYMENTS.—
Progress payments equal to 90 percent of the value of work performed may be made monthly on estimates approved by the Contracting Officer. Upon payment therefor, title to the property shall vest in the Government. The Contractor will notify the Government when all work is complete. Final payment will be made after final acceptance.

7. OFFICIALS NOT TO BENEFIT.—
No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. BUY AMERICAN ACT.—
The Contractor, subcontractors, material men, and suppliers must comply with the Buy American Act of March 3, 1933 (41 U.S.C. 10a–10d) and Executive Order 10582 of December 17, 1954 (19 Fed. Reg. 8723). (In substance the above require use of domestic materials except as otherwise authorized by the Act and Executive Order.)

9. NONDISCRIMINATION IN EMPLOYMENT.—
(a) In connection with the performance of work under this contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, color, or national origin. The aforesaid provision shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post hereafter in conspicuous places, available for employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of the nondiscrimination clause
(b) The Contractor further agrees to insert the foregoing provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

10. LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS NOT IN EXCESS OF $2,000.
(a) Eight-Hour Laws—Overtime Compensation.—The Eight-Hour Laws (40 U.S.C. 321–326) are applicable to this contract. (In substance they provide that laborers and mechanics employed by the Contractor or his subcontractors shall be paid not less than time and a half for work in excess of 8 hours a day. Violations are punishable as prescribed in 40 U.S.C. 322–324.)
(b) Nonrebate of Wages.—The Regulations issued by the Secretary of Labor (29 CFR, Part 3) pursuant to the Anti-Kickback Act, as amended (40 U.S.C. 276 (c), 18 U.S.C. 874), are applicable to this contract. (In substance they provide that no deductions may be made from wages except those required by law or permitted by the Regulations, that contractors and subcontractors shall preserve for 3 years after completion of the work payrolls which contain for each employee, his name, address, correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid, and shall submit weekly a statement of compliance, the form of which is stated in the Regulations.)
(c) Subcontractors—Termination.—The Contractor agrees to insert paragraphs *(a)* and *(b)* immediately above in all subcontracts. The term "Contractor" as used in such paragraphs in any subcontract shall be deemed to refer to the subcontractor. Breach of the requirements of this Clause 10 may be grounds for the termination of this contract.

11. CONVICT LABOR.—
In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

§ 1-16.901-19A Standard Form 19A: Labor Standards Provisions Applicable to Contracts in Excess of $2,000.

Standard Form 19-A
JUNE 1964 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.401

LABOR STANDARDS PROVISIONS

APPLICABLE TO CONTRACTS IN EXCESS OF $2,000

1. DAVIS-BACON ACT (40 U.S.C. 276a–a(7))

(a) All mechanics and laborers employed or working directly upon the site of the work shall be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by the Copeland Regulations (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or subcontractor and such laborers and mechanics. A copy of such wage determination decision shall be kept posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers.

(b) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination decision and which is to be employed under the contract shall be classified or reclassified conformably to the wage determination decision, and shall report the action taken to the Secretary of Labor. If the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers or mechanics to be used, the Contracting Officer shall submit the question, together with his recommendation, to the Secretary of Labor for final determination.

(c) In the event it is found by the Contracting Officer that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid at a rate of wages less than the rate of wages required by paragraph (a) of this clause, the Contracting Officer may (1) by written notice to the Government Prime Contractor terminate his right to proceed with the work, or such part of the work as to which there has been a failure to pay said required wages, and (2) prosecute the work to completion by contract or otherwise, whereupon such Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(d) Paragraphs (a), (b) and (c) of the clause shall apply to this contract to the extent that it is (1) a prime contract with the Government subject to the Davis-Bacon Act or (2) a subcontract also subject to the Davis-Bacon Act under such prime contract.

2. CONTRACT WORK HOURS STANDARDS ACT—
OVERTIME COMPENSATION (40 U.S.C. 327–330)

(a) The Contractor shall not require or permit any laborer or mechanic in any workweek in which he is employed on any work under this contract to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) In the event of any violation of the provisions of paragraph (a), the Contractor shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard workweek of forty hours without payment of the overtime wages required by paragraph (a).

3. APPRENTICES

(a) Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, United States Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the aforesaid Bureau of Apprenticeship and Training. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed.

(b) The Contractor shall furnish written evidence of the registration of his program and apprentices as well as of the appropriate ratio and wage rates, prior to using any apprentices in the contract work.

4. PAYROLLS AND PAYROLL RECORDS

(a) The Contractor shall maintain payrolls and basic payroll records, during the course of the work and shall preserve them for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name and address of each such employee, his correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid.

(b) The Contractor shall submit weekly a copy of all payrolls to the Contracting Officer. The Government Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The copy shall be accompanied by a statement signed by the Contractor indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor, and that the classifications set forth for each laborer or mechanic conform with the work he performed. Submission of the "Weekly Statement of Compliance" required under this contract and the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) shall satisfy the requirement for submission of the above statement.

(c) The Contractor shall make his employment records available for inspection by authorized representatives of the Contracting Officer and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

5. COMPLIANCE WITH COPELAND REGULATIONS

The Contractor shall comply with the Copeland Regulations of the Secretary of Labor (29 CFR, Part 3) which are incorporated herein by reference.

6. WITHHOLDING OF FUNDS

(a) The Contracting Officer may withhold or cause to be withheld from the Government Prime Contractor so much of the accrued payments or advances as may be considered necessary (1) to pay laborers and mechanics employed by the Contractor or any subcontractor on the work the full amount of wages required by the contract, and (2) to satisfy any liability of any Contractor for liquidated damages under clause 2, paragraph (b), hereof.

(b) If any Contractor fails to pay any laborer or mechanic employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Government Prime Contractor, take such action as may be necessary to cause suspension of any further payments or advances until such violations have ceased.

7. SUBCONTRACTS

The Contractor agrees to insert clauses 1 through 8 hereof in all subcontracts. The term "Contractor" as used in such clauses in any subcontract shall be deemed to refer to the subcontractor except in the phrase "Government Prime Contractor."

8. CONTRACT TERMINATION—DEBARMENT

A breach of clauses 1 through 7 hereof may be grounds for termination of the contract, and for debarment as provided in 29 CFR 5.6.

SPECIMEN COPY

§ 1–16.901–20 Standard Form 20: Invitation for Bids (Construction Contract).

STANDARD FORM 20
MARCH 1953 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.401

INVITATION FOR BIDS
(CONSTRUCTION CONTRACT)

REFERENCE

DATE

NAME AND LOCATION OF PROJECT

DEPARTMENT OR AGENCY

BY (*Issuing office*)

Sealed bids in for furnishing all labor, equipment, and materials and performing all work for the project described herein will be received until

in

and then publicly opened.

Information regarding bidding material, bid guarantee, and bonds

SPECIMEN

Description of work

Information regarding liquidated damages (if any), payments, etc., is attached or made a part of the specifications. Bids shall be submitted on the forms furnished or copies thereof.

§ 1–16.901–21 Standard Form 21: Bid Form (Construction Contract).

(a) Page 1 of Standard Form 21.

STANDARD FORM 21
JUNE 1964 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.401

BID FORM
(CONSTRUCTION CONTRACT)

REFERENCE

Read the Instructions to Bidders (Standard Form 22)
This form to be submitted in

DATE OF INVITATION

NAME AND LOCATION OF PROJECT

NAME OF BIDDER (*Type or print*)

(*Date*)

TO:

In compliance with the above-dated invitation for bids, the undersigned hereby proposes to perform all work for

in strict accordance with the General Provisions (Standard Form 23A), Labor Standards Provisions Applicable to Contracts in Excess of $2,000 (Standard Form 19–A), specifications, schedules, drawings, and conditions, for the following amount(s)

SPECIMEN

The undersigned agrees that, upon written acceptance of this bid, mailed or otherwise furnished within calendar days (calendar days unless a different period be inserted by the bidder) after the date of opening of bids, he will within calendar days (unless a longer period is allowed) after receipt of the prescribed forms, execute Standard Form 23, Construction Contract, and give performance and payment bonds on Government standard forms with good and sufficient surety.

The undersigned agrees, if awarded the contract, to commence the work within calendar days after the date of receipt of notice to proceed, and to complete the work within calendar days after the date of receipt of notice to proceed.

(*Continue on other side*)

(b) Page 2 of Standard Form 21.

Receipt of Amendments: The undersigned acknowledges receipt of the following amendments of the invitation for bids, drawings, and/or specifications, etc. (*Give number and date of each*):

The bidder represents (*Check appropriate boxes*):

(1) That he ☐ is, ☐ is not, a small business concern. (*For this purpose, a small business concern is a business concern, including its affiliates, which (a) is independently owned and operated, (b) is not dominant in the field of operation in which it is bidding on Government contracts, and (c) had average annual receipts for the preceding three fiscal years not exceeding $7,500,000. For additional information see governing regulations of the Small Business Administration.*)

(2) (a) That he ☐ has, ☐ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure this contract, and (b) that he ☐ has, ☐ has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (a) and (b) above as requested by the Contracting Officer. (*For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Subpart 1-1.5.*)

(3) That he ☐ has, ☐ has not, participated in a previous contract or subcontract subject to either the Equal Opportunity Clause herein or the clause originally contained in Section 301 of Executive Order No. 10925; that he ☐ has, ☐ has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)

(4) That he operates as an ☐ individual, ☐ partnership, ☐ joint venture, ☐ corporation, incorporated in State of _____

SPECIMEN

Enclosed is bid guarantee, consisting of _____ in the amount of _____

NAME OF BIDDER (*Type or print*)	FULL NAME OF ALL PARTNERS (*Type or print*)
BUSINESS ADDRESS (*Type or print*)	
BY (*Signature in ink. Type or print name under signature*)	
TITLE (*Type or print*)	

DIRECTIONS FOR SUBMITTING BIDS	Envelopes containing bids, guarantee, etc., must be sealed, marked, and addressed as follows:

CAUTION: Bids should not be qualified by exceptions to the bidding conditions.

§ 1-16.901-22 Standard Form 22: Instructions to Bidders (Construction Contract).

(a) Page 1 of Standard Form 22.

STANDARD FORM 22
JUNE 1964 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.401

INSTRUCTIONS TO BIDDERS

(CONSTRUCTION CONTRACT)

1. *Explanations to Bidders.* Any explanation desired by a bidder regarding the meaning or interpretation of the invitation for bids, drawings, specifications, etc., must be requested in writing and with sufficient time allowed for a reply to reach bidders before the submission of their bids. Any interpretation made will be in the form of an amendment of the invitation for bids, drawings, specifications, etc., and will be furnished to all prospective bidders. Its receipt by the bidder must be acknowledged in the space provided on the Bid Form (Standard Form 21) or by letter or telegram received before the time set for opening of bids. Oral explanations or instructions given before the award of the contract will not be binding.

2. *Conditions Affecting the Work.* Bidders should visit the site and take such other steps as may be reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Failure to do so will not relieve bidders from responsibility for estimating properly the difficulty or cost of successfully performing the work. The Government will assume no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of the contract, unless included in the invitation for bids, the specifications, or related documents.

3. *Bidder's Qualifications.* Before a bid is considered for award, the bidder may be requested by the Government to submit a statement regarding his previous experience in performing comparable work, his business and technical organization, financial resources, and plant available to be used in performing the work.

4. *Bid Guarantee.* Where a bid guarantee is required by the invitation for bids, failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

A bid guarantee shall be in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Bid guarantees, other than bid bonds, will be returned (*a*) to unsuccessful bidders as soon as practicable after the opening of bids, and (*b*) to the successful bidder upon execution of such further contractual documents and bonds as may be required by the bid as accepted.

If the successful bidder, upon acceptance of his bid by the Government within the period specified therein for acceptance (sixty days if no period is specified) fails to execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the bid as accepted within the time specified (ten days if no period is specified) after receipt of the forms by him, his contract may be terminated for default. In such event he shall be liable for any cost of procuring the work which exceeds the amount of his bid, and the bid guarantee shall be available toward offsetting such difference.

5. *Preparation of Bids.* (*a*) Bids shall be submitted on the forms furnished, or copies thereof, and must be manually signed. If erasures or other changes appear on the forms, each erasure or change must be initialed by the person signing the bid. Unless specifically authorized in the invitation for bids, telegraphic bids will not be considered.

(*b*) The bid form may provide for submission of a price or prices for one or more items, which may be lump sum bids, alternate prices, scheduled items resulting in a bid on a unit of construction or a combination thereof, etc. Where the bid form explicitly requires that the bidder bid on all items, failure to do so will disqualify the bid. When submission of a price on all items is not required, bidders should insert the words "no bid" in the space provided for any item on which no price is submitted.

(*c*) Unless called for, alternate bids will not be considered.

(*d*) Modifications of bids already submitted will be considered if received at the office designated in the invitation for bids by the time set for opening of bids. Telegraphic modifications will be considered, but should not reveal the amount of the original or revised bid.

6. *Submission of Bids.* Bids must be sealed, marked, and addressed as directed in the invitation for bids. Failure to do so may result in a premature opening of, or a failure to open, such bid.

SPECIMEN

(b) Page 2 of Standard Form 22.

7. *Late Bids and Modifications or Withdrawals.* (*a*) Bids and modifications or withdrawals thereof received at the office designated in the invitation for bids after the exact time set for opening of bids will not be considered unless: (1) They are received before award is made; and either (2) they are sent by registered mail or by certified mail for which an official dated post office stamp (postmark) on the original Receipt for Certified Mail has been obtained, or by telegraph if authorized, and it is determined by the Government that the late receipt was due solely to delay in the mails, or delay by the telegraph company, for which the bidder was not responsible; or (3) if submitted by mail (or by telegram if authorized), it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation: *Provided,* That timely receipt at such installation is established upon examination of an appropriate date or time stamp (if any) of such installation, or of other documentary evidence of receipt (if readily available) within the control of such installation or of the post office serving it. However, a modification which makes the terms of the otherwise successful bid more favorable to the Government will be considered at any time it is received and may thereafter be accepted.

(*b*) Bidders using certified mail are cautioned to obtain a Receipt for Certified Mail showing a legible, dated postmark and to retain such receipt against the chance that it will be required as evidence that a late bid was timely mailed.

(*c*) The time of mailing of late bids submitted by registered or certified mail shall be deemed to be the last minute of the date shown in the postmark on the registered mail receipt or registered mail wrapper or on the Receipt for Certified Mail unless the bidder furnishes evidence from the post office station of mailing which establishes an earlier time. In the case of certified mail, the only acceptable evidence is as follows: (1) where the Receipt for Certified Mail identifies the post office station of mailing, evidence furnished by the bidder which establishes that the business day of that station ended at an earlier time, in which case the time of mailing shall be deemed to be the last minute of the business day of that station; or (2) an entry in ink on the Receipt for Certified Mail showing the time of mailing and the initials of the postal employee receiving the item and making the entry, with appropriate written verification of such entry from the post office station of mailing, in which case the time of mailing shall be the time shown in the entry. If the postmark on the original Receipt for Certified Mail does not show a date, the bid shall not be considered.

8. *Withdrawal of Bids.* Bids may be withdrawn by written or telegraphic request received from bidders prior to the time set for opening of bids.

9. *Public Opening of Bids.* Bids will be publicly opened at the time set for opening in the invitation for bids. Their content will be made public for the information of bidders and others interested, who may be present either in person or by representative.

10. *Award of Contract.* (*a*) Award of contract will be made to that responsible bidder whose bid, conforming to the invitation for bids, is most advantageous to the Government, price and other factors considered.

(*b*) The Government may, when in its interest, reject any or all bids or waive any informality in bids received.

(*c*) The Government may accept any item or combination of items of a bid, unless precluded by the invitation for bids or the bidder includes in his bid a restrictive limitation.

11. *Contract and Bonds.* The bidder whose bid is accepted will, within the time established in the bid, enter into a written contract with the Government and, if required, furnish performance and payment bonds on Government standard forms in the amounts indicated in the invitation for bids or the specifications.

SPECIMEN

§ 1–16.901–23 Standard Form 23: Construction Contract.

(a) Page 1 of Standard Form 23.

STANDARD FORM 23
MARCH 1953 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.406

CONSTRUCTION CONTRACT
(See instructions on reverse)

CONTRACT NO.

DATE OF CONTRACT

NAME AND ADDRESS OF CONTRACTOR

CHECK APPROPRIATE BOX
- ☐ Individual
- ☐ Partnership
- ☐ Incorporated in the State of

DEPARTMENT OR AGENCY

CONTRACT FOR (*Work to be performed*)

PLACE

AMOUNT OF CONTRACT (*Express in words and figures*)

ADMINISTRATIVE DATA (*Optional*)

THIS CONTRACT, entered into this date by the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and the individual, partnership, or corporation named above, hereinafter called the Contractor, witnesseth that the parties hereto do mutually agree as follows:

Statement of Work. The Contractor shall furnish all labor, equipment, and materials and perform the work above described for the amount stated above in strict accordance with the General Provisions (Standard Form 23a), specifications, schedules, drawings, and conditions all of which are made a part hereof and designated as follows:

WORK SHALL BE STARTED | WORK SHALL BE COMPLETED

SPECIMEN

(b) Page 2 of Standard Form 23.

Alterations. The following changes were made in this contract before it was signed by the parties hereto:

In witness whereof, the parties hereto have executed this contract as of the date entered on the first page hereof.

THE UNITED STATES OF AMERICA

By _____

_____
(Official title)

CONTRACTOR

_____
(Name of Contractor)

By _____
(Signature)

_____
(Title)

SPECIMEN

INSTRUCTIONS

1. This form shall be used, as required by GSA regulations, for contracts for the construction, alteration, or repair of public buildings or works.

2. The full name and business address of the Contractor must be inserted in the space provided on the face of the form. The Contractor shall sign in the space provided above with his usual signature and typewrite or print name under all signatures to the contract and bonds.

3. An officer of a corporation, a member of a partnership, or an agent signing for the Contractor shall place his signature and title after the word "By" under the name of the Contractor. A contract executed by an attorney or agent on behalf of the Contractor shall be accompanied by two authenticated copies of his power of attorney, or other evidence of his authority to act on behalf of the Contractor.

§ 1-16.901-23A Standard Form 23A: General Provisions (Construction Contract).

(a) Page 1 of Standard Form 23A.

Standard Form 23A
JUNE 1964 Edition
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.401

GENERAL PROVISIONS

(Construction Contract)

1. DEFINITIONS

(a) The term "head of the agency" or "Secretary" as used herein means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" as used herein means the person executing this contract on behalf of the Government and includes a duly appointed successor or authorized representative.

2. SPECIFICATIONS AND DRAWINGS

The Contractor shall keep on the work a copy of the drawings and specifications and shall at all times give the Contracting Officer access thereto. Anything mentioned in the specifications and not shown on the drawings, or shown on the drawings and not mentioned in the specifications, shall be of like effect as if shown or mentioned in both. In case of difference between drawings and specifications, the specifications shall govern. In case of discrepancy either in the figures, in the drawings, or in the specifications, the matter shall be promptly submitted to the Contracting Officer, who shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination shall be at his own risk and expense. The Contracting Officer shall furnish from time to time such detail drawings and other information as he may consider necessary, unless otherwise provided.

3. CHANGES

The Contracting Officer may, at any time, by written order, and without notice to the sureties, make changes in the drawings and/or specifications of this contract if within its general scope. If such changes cause an increase or decrease in the Contractor's cost of, or time required for, performance of the contract, an equitable adjustment shall be made and the contract modified in writing accordingly. Any claim of the Contractor for adjustment under this clause must be asserted in writing within 30 days from the date of receipt by the Contractor of the notification of change unless the Contracting Officer grants a further period of time before the date of final payment under the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Clause 6 of these General Provisions; but nothing provided in this clause shall excuse the Contractor from proceeding with the prosecution of the work as changed. Except as otherwise provided in this contract, no charge for any extra work or material will be allowed.

4. CHANGED CONDITIONS

The Contractor shall promptly, and before such conditions are disturbed, notify the Contracting Officer in writing of: (a) subsurface or latent physical conditions at the site differing materially from those indicated in this contract, or (b) unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this contract. The Contracting Officer shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of this contract, an equitable adjustment shall be made and the contract modified in writing accordingly. Any claim of the Contractor for adjustment hereunder shall not be allowed unless he has given notice as above required; or unless the Contracting Officer grants a further period of time before the date of final payment under the contract. If the parties fail to agree upon the adjustment to be made, the dispute shall be determined as provided in Clause 6 of these General Provisions.

5. TERMINATION FOR DEFAULT—DAMAGES FOR DELAY—TIME EXTENSIONS

(a) If the Contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the Government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the Contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the Government resulting from his refusal or failure to complete the work within the specified time.

(b) If fixed and agreed liquidated damages are provided in the contract and if the Government so terminates the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If fixed and agreed liquidated damages are provided in the contract and if the Government does not so terminate the Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the work is completed or accepted.

(d) The Contractor's right to proceed shall not be so terminated nor the Contractor charged with resulting damage if:

(1) The delay in the completion of the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the Government in either its sovereign or contractual capacity, acts of another contractor in the performance of a contract with the Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both the Contractor and such subcontractors or suppliers; and

(2) The Contractor, within 10 days from the beginning of any such delay (unless the Contracting Officer grants a further period of time before the date of final payment under the contract), notifies the Contracting Officer in writing of the causes of delay.

The Contracting Officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of fact shall be final and conclusive on the parties, subject only to appeal as provided in Clause 6 of these General Provisions.

(e) If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be

SPECIMEN

(b) Page 2 of Standard Form 23A.

and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

7. Payments

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either $1,000 or 50 percent of the total amount of this contract.

8. Assignment of Claims

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

9. Additional Bond Security

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

10. Examination of Records

(The following clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation, but is not applicable if this contract was entered into by means of formal advertising.)

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding $2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

11. Default

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered

(c) Page 3 of Standard Form 23A.

Standard Form 23A
June 1964 Edition

be submitted for approval at the Contractor's expense, with all shipping charges prepaid. Machinery, equipment, material, and articles installed or used without required approval shall be at the risk of subsequent rejection.

(b) All work under this contract shall be performed in a skillful and workmanlike manner. The Contracting Officer may, in writing, require the Contractor to remove from the work any employee the Contracting Officer deems incompetent, careless, or otherwise objectionable.

10. Inspection and Acceptance

(a) Except as otherwise provided in this contract, inspection and test by the Government of material and workmanship required by this contract shall be made at reasonable times and at the site of the work, unless the Contracting Officer determines that such inspection or test of material which is to be incorporated in the work shall be made at the place of production, manufacture, or shipment of such material. To the extent specified by the Contracting Officer at the time of determining to make off-site inspection or test, such inspection or test shall be conclusive as to whether the material involved conforms to the contract requirements. Such off-site inspection or test shall not relieve the Contractor of responsibility for damage to or loss of the material prior to acceptance, nor in any way affect the continuing rights of the Government after acceptance of the completed work under the terms of paragraph (f) of this clause, except as hereinabove provided.

(b) The Contractor shall, without charge, replace any material or correct any workmanship found by the Government not to conform to the contract requirements, unless in the public interest the Government consents to accept such material or workmanship with an appropriate adjustment in contract price. The Contractor shall promptly segregate and remove rejected material from the premises.

(c) If the Contractor does not promptly replace rejected material or correct rejected workmanship, the Government (1) may, by contract or otherwise, replace such material or correct such workmanship and charge the cost thereof to the Contractor, or (2) may terminate the Contractor's right to proceed in accordance with Clause 5 of these General Provisions.

(d) The Contractor shall furnish promptly, without additional charge, all facilities, labor, and material reasonably needed for performing such safe and convenient inspection and test as may be required by the Contracting Officer. All inspection and test by the Government shall be performed in such manner as not unnecessarily to delay the work. Special, full size, and performance tests shall be performed as described in this contract. The Contractor shall be charged with any additional cost of inspection when material and workmanship are not ready at the time specified by the Contractor for its inspection.

(e) Should it be considered necessary or advisable by the Government at any time before acceptance of the entire work to make an examination of work already completed, by removing or tearing out same, the Contractor shall, on request, promptly furnish all necessary facilities, labor, and material. If such work is found to be defective or nonconforming in any material respect, due to the fault of the Contractor or his subcontractors, he shall defray all the expenses of such examination and of satisfactory reconstruction. If, however, such work is found to meet the requirements of the contract, an equitable adjustment shall be made in the contract price to compensate the Contractor for the additional services involved in such examination and reconstruction and, if completion of the work has been delayed thereby, he shall, in addition, be granted a suitable extension of time.

(f) Unless otherwise provided in this contract, acceptance by the Government shall be made as promptly as practicable after completion and inspection of all work required by this contract. Acceptance shall be final and conclusive except as regards latent defects, fraud, or such gross mistakes as may amount to fraud, or as regards the Government's rights under any warranty or guarantee.

11. Superintendence By Contractor

The Contractor shall give his personal superintendence to the work or have a competent foreman or superintendent, satisfactory to the Contracting Officer, on the work at all times during progress, with authority to act for him.

12. Permits and Responsibilities

The Contractor shall, without additional expense to the Government, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal, State, and municipal laws, codes, and regulations, in connection with the prosecution of the work. He shall be similarly responsible for all damages to persons or property that occur as a result of his fault or negligence. He shall take proper safety and health precautions to protect the work, the workers, the public, and the property of others. He shall also be responsible for all materials delivered and work performed until completion and acceptance of the entire construction work, except for any completed unit of construction thereof which theretofore may have been accepted.

13. Conditions Affecting the Work

The Contractor shall be responsible for having taken steps reasonably necessary to ascertain the nature and location of the work, and the general and local conditions which can affect the work or the cost thereof. Any failure by the Contractor to do so will not relieve him from responsibility for successfully performing the work without additional expense to the Government. The Government assumes no responsibility for any understanding or representations concerning conditions made by any of its officers or agents prior to the execution of this contract, unless such understanding or representations by the Government are expressly stated in the contract.

14. Other Contracts

The Government may undertake or award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and Government employees and carefully fit his own work to such additional work as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor or by Government employees.

15. Patent Indemnity

Except as otherwise provided, the Contractor agrees to indemnify the Government and its officers, agents, and employees against liability, including costs and expenses, for infringement upon any Letters Patent of the United States (except Letters Patent issued upon an application which is now or may hereafter be, for reasons of national security, ordered by the Government to be kept secret or otherwise withheld from issue) arising out of the performance of this contract or out of the use or disposal by or for the account of the Government of supplies furnished or construction work performed hereunder.

16. Additional Bond Security

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government, or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

17. Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

18. Officials Not To Benefit

No member of Congress or resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

Standard Form 23A
June 1964 Edition

(d) Page 4 of Standard Form 23A.

19. Buy American

(a) Agreement. In accordance with the Buy American Act (41 U.S.C. 10a–10d) and Executive Order 10582, December 17, 1954 (3 CFR Supp.), the Contractor agrees that only domestic construction material will be used (by the Contractor, subcontractors, materialmen, and suppliers) in the performance of this contract, except for nondomestic material listed in the contract.

(b) Domestic construction material. "Construction material" means any article, material, or supply brought to the construction site for incorporation in the building or work. An unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. A manufactured construction material is a "domestic construction material" if it has been manufactured in the United States and if the cost of its components which have been mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. "Component" means any article, material, or supply directly incorporated in a construction material.

(c) Domestic component. A component shall be considered to have been "mined, produced, or manufactured in the United States" (regardless of its source in fact) if the article, material, or supply in which it is incorporated was manufactured in the United States and the component is of a class or kind determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

20. Convict Labor

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

21. Equal Opportunity

(The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity, 41 CFR, (Chapter 60). Exemptions include contracts and subcontracts (i) not exceeding $10,000, (ii) not exceeding $100,000 for standard commercial supplies or raw materials, and (iii) under which work is performed outside the United States and no recruitment of workers within the United States is involved.)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under this nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. *The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Unless otherwise provided, the Equal Opportunity Clause is not required to be inserted in subcontracts below the second tier except for subcontracts involving the performance of 'construction work' at the 'site of construction' (as those terms are defined in the Committee's rules and regulations), in which case the clause must be inserted in all such subcontracts. Subcontracts may incorporate by reference the Equal Opportunity Clause.*

22. Utilization of Small Business Concerns

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

§ 1–16.901–24 Standard Form 24: Bid Bond.

(a) Page 1 of Standard Form 24.

STANDARD FORM 24
June 1964 Edition
General Services Admin.
FPR (41 CFR) 1–16.801

24-103

BID BOND
(See Instructions on reverse)

DATE BOND EXECUTED *(Must not be later than bid opening date)*

PRINCIPAL *(Legal name and business address)*

TYPE OF ORGANIZATION ("X" one)
☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) *(Name and business address)*

PENAL SUM OF BOND					BID IDENTIFICATION	
PERCENT OF BID PRICE	AMOUNT NOT TO EXCEED				BID DATE	INVITATION NO.
	MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS	FOR *(Construction, Supplies or Services)*	

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal and Surety(ies) hereto, are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: *Provided*, That, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted the bid identified above.

NOW, THEREFORE, if the Principal, upon acceptance by the Government of his bid identified above, within the period specified therein for acceptance (sixty (60) days if no period is specified), shall execute such further contractual documents, if any, and give such bond(s) as may be required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of the forms by him, or in the event of failure so to execute such further contractual documents and give such bonds, if the Principal shall pay the Government for any cost of procuring the work which exceeds the amount of his bid, then the above obligation shall be void and of no effect.

Each Surety executing this instrument hereby agrees that its obligation shall not be impaired by any extension(s) of the time for acceptance of the bid that the Principal may grant to the Government, notice of which extension(s) to the Surety(ies) being hereby waived; provided that such waiver of notice shall apply only with respect to extensions aggregating not more than sixty (60) calendar days in addition to the period originally allowed for acceptance of the bid.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this bid bond and have affixed their seals on the date set forth above.

PRINCIPAL			
Signature(s)	1 *(Seal)*	2 *(Seal)*	Corporate Seal
Name(s) & Title(s) *(Typed)*	1	2	

INDIVIDUAL SURETIES		
Signature(s)	1 *(Seal)*	2 *(Seal)*
Name(s) *(Typed)*	1	2

CORPORATE SURETY(IES)					
SURETY A	Name & Address		STATE OF INC	LIABILITY LIMIT	
	Signature(s)	1.	2		Corporate Seal
	Name(s) & Title(s) *(Typed)*	1.	2		

SPECIMEN
SPECIMEN

(b) Page 2 of Standard Form 24.

CORPORATE SURETY(IES) (Continued)					
SURETY B	Name & Address		STATE OF INC	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1	2		
	Name(s) & Title(s) (Typed)	1	2		
SURETY C	Name & Address		STATE OF INC	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1	2.		
	Name(s) & Title(s) (Typed)	1	2		
SURETY D	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1	2		
SURETY E	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1	2.		
	Name(s) & Title(s) (Typed)	1.	2		
SURETY F	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1	2		
SURETY G	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		

SPECIMEN

INSTRUCTIONS

1. This form is authorized for use whenever a bid guaranty is required in connection with construction work or the furnishing of supplies or services. There shall be no deviation from this form without approval by the Administrator of General Services.

2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.

3. The penal sum of the bond may be expressed as a percentage of the bid price if desired. In such cases, a maximum dollar limitation may be stipulated (e.g., 20% of the bid price but the amount not to exceed _____ dollars).

4. (a) Corporations executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)", and in the space designated "SURETY(IES)" on the face of this form only the letter identification of the Sureties shall be inserted.

(b) Where individual sureties execute the bond, they shall be two or more responsible persons. A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. Such sureties may be required to furnish additional substantiating information concerning their assets and financial capability as the Government may require.

5. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal"; and, if executed in Maine or New Hampshire, shall also affix an adhesive seal.

6. The name of each person signing this bid bond should be typed in the space provided.

§ 1-16.901-25 Standard Form 25: Performance Bond.

(a) Page 1 of Standard Form 25.

Standard Form 25
June 1964 Edition
General Services Admin.
FPR (41 CFR) 1-16.801

PERFORMANCE BOND
(See Instructions on reverse)

DATE BOND EXECUTED *(Must be same or later than date of Contract)*

PRINCIPAL *(Legal name and business address)*

TYPE OF ORGANIZATION *("X" one)*
☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) *(Name(s) and business address(es))*

PENAL SUM OF BOND

MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENT(S)

CONTRACT DATE	CONTRACT NO.

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal and Surety(ies) hereto, are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: *Provided*, That, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the contract identified above:

NOW, THEREFORE, if the Principal shall perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Government, with or without notice to the Surety(ies), and during the life of any guaranty required under the contract, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived, then the above obligations shall be void and of no effect.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this performance bond and have affixed their seals on the date set forth above.

SPECIMEN

PRINCIPAL			
Signature(s)	1. (Seal)	2. (Seal)	Corporate Seal
Name(s) & Title(s) (Typed)	1.	2.	

INDIVIDUAL SURETY(IES)		
Signature(s)	1. (Seal)	2. (Seal)
Name(s) (Typed)	1.	2.

CORPORATE SURETY(IES)					
SURETY A	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		

§ 1-16.901-25A Standard Form 25A: Payment Bond.

(a) Page 1 of Standard Form 25A.

Standard Form 25-A
June 1964 Edition
General Services Admin.
FPR (41 CFR) 1-16.801

PAYMENT BOND
(See Instructions on reverse)

DATE BOND EXECUTED *(Must be same or later than date of Contract)*

PRINCIPAL *(Legal name and business address)*

TYPE OF ORGANIZATION *("X" one)*
☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) *(Name(s) and business address(es))*

PENAL SUM OF BOND

MILLION($)	THOUSAND($)	HUNDRED($)	CENT($)

CONTRACT DATE	CONTRACT NO

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal and Surety(ies) hereto, are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally: *Provided*, That, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into the contract identified above;

NOW, THEREFORE, if the Principal shall promptly make payment to all persons supplying labor and material in the prosecution of the work provided for in said contract and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the Surety(ies) being hereby waived, then the above obligation shall be void and of no effect.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this payment bond and have affixed their seals on the date set forth above.

PRINCIPAL			
Signature(s)	1 (Seal)	2. (Seal)	Corporate Seal
Name(s) & Title(s) *(Typed)*	1	2	

INDIVIDUAL SURETY(IES)		
Signature(s)	1 (Seal)	2 (Seal)
Name(s) *(Typed)*	1	2.

CORPORATE SURETY(IES)					
SURETY A	Name & Address		STATE OF INC	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1	2		
	Name(s) & Title(s) *(Typed)*	1	2.		

(b) Page 2 of Standard Form 25.

CORPORATE SURETY(IES) (Continued)					
SURETY B	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY C	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY D	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY E	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		
SURETY F	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1	2.		
SURETY G	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) *(Typed)*	1.	2.		

BOND PREMIUM ▶	RATE PER THOUSAND $	TOTAL $

SPECIMEN

SPECIMEN

INSTRUCTIONS

1. This form is authorized for use in connection with contracts for construction work or the furnishing of supplies or services.

2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.

3. (a) Corporations executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)", and in the space designated "SURETY(IES)" on the face of this form only the letter identification of the Sureties shall be inserted.

(b) Where individual sureties execute the bond, they shall be two or more responsible persons. A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. Such sureties may be required to furnish additional substantiating information concerning their assets and financial capability as the Government may require.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal"; and, if executed in Maine or New Hampshire, shall also affix an adhesive seal.

5. The name of each person signing this performance bond should be typed in the space provided.

(b) Page 2 of Standard Form 25A.

CORPORATE SURETY(IES) (Continued)

SURETY B	Name & Address		STATE OF INC	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY C	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY D	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY E	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY F	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY G	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		

SPECIMEN

INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, shall be used whenever a payment bond is required under the act of August 24, 1935, 49 Stat. 793, as amended (40 U.S.C. 270a-270e). There shall be no deviation from this form without approval by the Administrator of General Services.

2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of the form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.

3. (a) Corporations executing the bond as sureties must be among those appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein. Where more than a single corporate surety is involved, their names and addresses (city and State) shall be inserted in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)", and in the space designated "SURETY(IES)" on the face of this form only the letter identification of the Sureties shall be inserted.

(b) Where individual sureties execute the bond, they shall be two or more responsible persons. A completed Affidavit of Individual Surety (Standard Form 28), for each individual surety, shall accompany the bond. Such sureties may be required to furnish additional substantiating information concerning their assets and financial capability as the Government may require.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal"; and, if executed in Maine or New Hampshire, shall also affix an adhesive seal.

5. The name of each person signing this payment bond should be typed in the space provided.

§ 1-16.901-25B Standard Form 25B: Continuation Sheet for Standard Forms 24, 25 and 25A.

(a) Page 1 of Standard Form 25B.

Standard Form 25B
June 1964 Edition
General Services Admin.
FPR (41 CFR 1-16.801)

CONTINUATION SHEET
(For Standard Forms 24, 25 and 25A)

NAME OF PRINCIPAL *(Legal name and business address)*

TYPE OF BOND
☐ BID ☐ PERFORMANCE ☐ PAYMENT

FURNISHED IN CONNECTION WITH— ☐ BID ☐ CONTRACT
DATED—

CORPORATE SURETY(IES)

SURETY H	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY I	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY J	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY K	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY L	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY M	Name & Address		STATE OF INC	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY N	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY O	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		

SPECIMEN

(b) Page 2 of Standard Form 25B.

CORPORATE SURETY(IES)					
SURETY P	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY Q	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY R	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY S	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY T	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY U	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY V	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY W	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		
SURETY X	Name & Address		STATE OF INC.	LIABILITY LIMIT	Corporate Seal
	Signature(s)	1.	2.		
	Name(s) & Title(s) (Typed)	1.	2.		

SPECIMEN

§ 1–16.901–26 Standard Form 26: Award (Supply Contract).

STANDARD FORM 26
NOVEMBER 1949 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.101

AWARD
(SUPPLY CONTRACT)

CONTRACT NO.

ORDER NO. (If any)

PAGE NO. 1

NUMBER OF PAGES OF AWARD

DATE OF AWARD

INVITATION NO.

TO (Contractor and address)

ISSUED BY

INVOICE FOR PAYMENT SHOULD BE MAILED TO

PAYMENT WILL BE MADE BY

Your bid on the above numbered Invitation for Bids is hereby accepted as to the items enumerated below with the additions or changes made by you, which additions or changes are set forth in full below.

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT
				TOTAL AMOUNT	

SPECIMEN

This Award consummates the contract, which consists of the following documents, including any Continuation Sheets thereto: (a) the Government's Invitation for Bids and your Bid, (b) the Schedule, (c) the General Provisions, and (d) the Government's Award. No further contractual document is necessary.

UNITED STATES OF AMERICA

BY _____

CONTRACTING OFFICER

Standard Form 26
Nov. 1949 Edition

§ 1–16.901–28 Standard Form 28: Affidavit of Individual Surety.

(a) Page 1 of Standard Form 28.

STANDARD FORM 28
NOVEMBER 1950 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.901

AFFIDAVIT OF INDIVIDUAL SURETY

(See Instructions on Reverse)

STATE OF

COUNTY OF } ss:

I, the person whose signature appears below as surety, being duly sworn, depose and say that I am one of the sureties to the attached bond; that I am a citizen of the United States, and of full age and legally competent; that I am not a partner in the business of the principal on the bond or bonds on which I appear or may appear as surety; that the information herein below furnished is true and correct. This affidavit is made to induce the United States of America to accept me as surety on the attached bond.

MY NAME *(first, middle, last)*

MY ADDRESS *(street and number, city and State)*

TYPE AND DURATION OF MY OCCUPATION

NAME OF MY EMPLOYER

MY BUSINESS ADDRESS *(street and number, city and State)*

AMOUNT I AM WORTH IN REAL ESTATE AND PERSONAL PROPERTY OVER AND ABOVE (1) ALL MY DEBTS AND LIABILITIES OWING AND INCURRED, (2) ANY PROPERTY EXEMPT FROM EXECUTION, (3) ANY PECUNIARY INTEREST I HAVE IN THE BUSINESS OF THE PRINCIPAL ON SAID BOND, AND (4) ANY INTEREST I HAVE IN ANY SO-CALLED COMMUNITY PROPERTY

LOCATION AND DESCRIPTION OF REAL ESTATE OF WHICH I AM SOLE OWNER IN FEE SIMPLE *(not exempt from seizure and sale under any homestead law, community or marriage law, or upon attachment, execution, or judicial process)*

FAIR VALUE OF SUCH REAL ESTATE

ASSESSED VALUE OF SUCH REAL ESTATE FOR TAXATION PURPOSES

ALL MORTGAGES OR OTHER ENCUMBRANCES AGAINST ABOVE REAL ESTATE, THERE BEING NO OTHERS *(if none, so state)*

MY LIABILITIES OWING AND INCURRED DO NOT EXCEED THE AMOUNT OF

AMOUNT I AM WORTH, OVER AND ABOVE JUST DEBTS AND LIABILITIES, IN PERSONAL PROPERTY SUBJECT TO EXECUTION AND SALE, THIS AMOUNT BEING ADDITIONAL TO THE REAL ESTATE ABOVE DESCRIBED

THE ABOVE PERSONAL PROPERTY CONSISTS OF THE FOLLOWING

ALL OTHER BONDS ON WHICH I AM SURETY *(state character and amount of each bond; if none, so state)*

MY SIGNATURE AS SURETY

Subscribed and sworn to before me this date at .....

OFFICIAL SEAL

(Signature) *(Title of official administering oath)* *(Date)*

STANDARD FORM 28
NOVEMBER 1950 EDITION

SPECIMEN

(b) Page 2 of Standard Form 28.

CERTIFICATE OF SUFFICIENCY

I HEREBY CERTIFY, That the surety named herein is personally known to me; that, in my judgment, said surety is responsible, and qualified to act as such; and that, to the best of my knowledge and belief, the facts stated by said surety in the foregoing affidavit are true.

NAME *(typewritten)*

SIGNATURE

OFFICIAL TITLE

ADDRESS

INSTRUCTIONS

1. This form shall be used whenever sureties on bonds to be executed in connection with Government contracts are individual sureties. There shall be no deviation from this form except as authorized by the General Services Administration.

2. A firm, as such, will not be accepted as a surety, nor a partner for copartners or for a firm of which he is a member. Stockholders of a corporate principal may be accepted as sureties provided their qualifications as such are independent of their stock holdings therein. Sureties, if individuals, shall be citizens of the United States, except that sureties on bonds executed in any foreign country, the Canal Zone, Puerto Rico, Hawaii, Alaska, Guam, or any possession of the United States, for the performance of contracts entered into in these places, need not be citizens of the United States, but if not citizens of the United States shall be domiciled in the place where the contract is to be performed.

3. The individual surety shall justify, under oath, in a sum not less than the penalty of the bond, according to the form appearing on the face hereof, before a United States commissioner, a clerk of a United States court, a notary public, or some other officer having authority to administer oaths generally. If the officer has an official seal, it shall be affixed, otherwise the proper certificate as to his official character shall be furnished. Where citizenship is not required, as provided in paragraph 2 of these instructions, the affidavit may be amended accordingly.

4. The certificate of sufficiency shall be signed by an officer of a bank or trust company, a judge or clerk of a court of record, a United States district attorney or commissioner, a postmaster, a collector or deputy collector of internal revenue, or any other officer of the United States acceptable to the department or establishment concerned. Further certificates as to the financial qualification of the sureties may be required from time to time. Such certificates must be based on the personal investigation of the certifying officers at the time of the making thereof, and not upon prior certificates.

SPECIMEN

§ 1-16.901-30 Standard Form 30: Invitation and Bid (Supply Contract).

(a) Page 1 of Standard Form 30.

STANDARD FORM 30
OCTOBER 1957 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.101

INVITATION AND BID
(SUPPLY CONTRACT)

ISSUED BY	DEPARTMENT
ADDRESS	

INVITATION FOR BIDS

DATE ISSUED	INVITATION NO.

Sealed bids in _____, subject to (1) the Terms and Conditions of the Invitation for Bids, (2) the attached Schedule, (3) General Provisions (Standard Form 32, _____ edition), which are incorporated herein by reference, and (4) such other contract provisions and specifications as are attached or incorporated by reference in the Schedule, will be received at the above office until _____ o'clock _____ m., _____ Time, _____ (date) and at that time publicly opened, for furnishing the supplies or services described in the attached Schedule.

General information and instructions to bidders are contained in the terms and conditions on the reverse hereof.

BID — DATE OF BID

In compliance with the above, the undersigned offers and agrees, if this Bid be accepted within _____ calendar days *(60 calendar days unless a different period be inserted by the bidder)* from the date of the opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, delivered at the designated point(s) within the time specified in the attached Schedule.

BIDDER REPRESENTS: (Check appropriate boxes)

(1) That he ☐ is, ☐ is not, a small business concern. *(See definition on reverse hereof.)* If bidder is a small business concern and is not the manufacturer of the supplies bid upon, he also represents that all supplies to be furnished hereunder ☐ will, ☐ will not, be manufactured or produced by a small business concern in the United States, its Territories, its possessions, or the Commonwealth of Puerto Rico.

(2) That he is a ☐ regular dealer in, ☐ manufacturer of, the supplies bid upon.

(3) (*a*) That he ☐ has, ☐ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure this contract, and (*b*) that he ☐ has, ☐ has not, paid or agreed to pay to any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (*a*) and (*b*) above as requested by the Contracting Officer. *(For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 44, Part 150.)*

FULL NAME OF BIDDER *(Type or print)*

BUSINESS ADDRESS OF BIDDER *(Street, city, zone, and State. Type or print)*

TELEPHONE NO.

SIGNATURE OF PERSON AUTHORIZED TO SIGN BID

TYPE OF BUSINESS (Check appropriate box)
☐ Individual ☐ Partnership ☐ Corporation

INCORPORATED IN THE STATE OF (Complete, if corporation)

TYPE OR PRINT SIGNER'S NAME AND TITLE

SPECIMEN

(b) Page 2 of Standard Form 30.

TERMS AND CONDITIONS OF THE INVITATION FOR BIDS

1. PREPARATION OF BIDS.—(*a*) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(*b*) Each bidder shall furnish the information required by the bid form. The bidder shall print or type his name on the Schedule and each Continuation Sheet thereof on which he makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent must be accompanied by evidence of his authority.

(*c*) Unit price for each unit bid on shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the Amount column of the Schedule for each item bid on. In case of error in extension of price, the unit price will govern.

(*d*) Alternate bids will not be considered unless authorized by the Invitation.

(*e*) When not otherwise specified, bidder must definitely state time of proposed delivery.

(*f*) Time, if stated as a number of days, will include Sundays and holidays.

2. SUBMISSION OF BIDS.—(*a*) Bids and modifications thereof shall be enclosed in sealed envelopes addressed to the issuing office, with the name and address of the bidder, the date and hour of opening, and the invitation number on the face of the envelope. Telegraphic bids will not be considered unless authorized by the Invitation; however, bids may be modified by telegraphic notice provided such notice is received prior to the time set for the opening of the bids.

(*b*) Samples of items, when required, must be submitted within the time specified, and unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Invitation.

(*c*) In the event no bid is to be submitted, do not return the Invitation unless otherwise specified. However, a letter or post card should be sent to the issuing office advising whether future Invitations for the type of supplies or services covered by this Invitation are desired.

3. WITHDRAWAL OF BIDS.—Bids may be withdrawn by written or telegraphic notice (see 4 below).

4. LATE BIDS.—Bids and modifications or withdrawals thereof received after the time set for opening will not be considered, unless they are received before the award is made, and it is determined by the Government that failure to arrive on time was due solely to delay in the mails for which the bidder was not responsible.

5. GOVERNMENT-FURNISHED PROPERTY.—No material, labor, or facilities will be furnished by the Government unless otherwise provided for in the Invitation.

6. LABOR INFORMATION.—Attention is invited to the possibility that wage determinations may have been made under the Walsh-Healey Public Contracts Act providing minimum wages for employees engaged in the manufacture for sale to the Government of the supplies covered by this Invitation for Bids. Information in this connection, as well as general information as to the requirements of the Act concerning overtime payment, child labor, safety and health provisions, etc., may be obtained from the Wage and Hour and Public Contracts Divisions, Department of Labor, Washington 25, D. C. Requests for information should state the Invitation number, the issuing agency and the supplies covered.

7. DISCOUNTS.—(*a*) Prompt-payment discounts will be included in the evaluation of bids, provided the period of the offered discount is sufficient to permit payment within such period in the regular course of business under the delivery, inspection, and payment provisions of the Invitation and Bid.

(*b*) In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of those points, or from date correct invoice or voucher is received in the office specified by the Government if the latter date is later than the date of delivery. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing of the Government check.

8. AWARD OF CONTRACT.—(*a*) The contract will be awarded to that responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered.

(*b*) The Government reserves the right to reject any or all bids and to waive informalities and minor irregularities in bids received.

(*c*) The Government may accept any item or group of items of any bid, unless the bidder qualifies his bid by specific limitations. UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, BIDS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED; AND THE GOVERNMENT RESERVES THE RIGHT TO MAKE AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY BID UPON AT THE UNIT PRICES OFFERED UNLESS THE BIDDER SPECIFIES OTHERWISE IN HIS BID.

(*d*) A written award mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the bid shall be deemed to result in a binding contract without further action by either party.

9. SELLER'S INVOICES.—Invoices shall be prepared and submitted in quadruplicate unless otherwise specified. Invoices shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.

10. DEFINITION OF SMALL BUSINESS.—Generally, a small business concern for the purpose of Government procurement is a concern that (1) is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees, or (2) is certified as a small business concern by Small Business Administration. *(See Code of Federal Regulations, Title 13, Part 103, as amended, which contains the detailed definition and related procedures.)*

§ 1–16.901–31 Standard Form 31: Schedule (Supply Contract).

STANDARD FORM 31
NOVEMBER 1949 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.101

SCHEDULE
(SUPPLY CONTRACT)

PAGE NO.	NUMBER OF PAGES OF SCHEDULE
1	

REQUISITION NUMBER OR OTHER PURCHASE AUTHORITY | INVITATION NO.

ACCOUNTING AND APPROPRIATION DATA

The supplies or services to be furnished, the specifications, the discounts, the time and place of delivery, and any other special terms and conditions applicable to the Invitation for Bids, are set forth below.

DISCOUNTS WILL BE ALLOWED BY BIDDER FOR PROMPT PAYMENT AS FOLLOWS:
_____ PERCENT, 10 CALENDAR DAYS; _____ PERCENT, 20 CALENDAR DAYS; _____ PERCENT, 30 CALENDAR DAYS.

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of Units)	UNIT	UNIT PRICE	AMOUNT

NAME OF BIDDER

SPECIMEN

Standard Form 31,
Nov. 1949 Edition.

§ 1–16.901–32 Standard Form 32: General Provisions (Supply Contract).

(a) Page 1 of Standard Form 32.

STANDARD FORM 32
JUNE 1964 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.101

GENERAL PROVISIONS

(Supply Contract)

1. Definitions

As used throughout this contract, the following terms shall have the meaning set forth below:

(a) The term "head of the agency" or "Secretary" means the Secretary, the Under Secretary, any Assistant Secretary, or any other head or assistant head of the executive or military department or other Federal agency; and the term "his duly authorized representative" means any person or persons or board (other than the Contracting Officer) authorized to act for the head of the agency or the Secretary.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

2. Changes

The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any one or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change: *Provided, however,* That the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as a result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of such property. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

3. Extras

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

4. Variation in Quantity

No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

5. Inspection

(a) All supplies (which term throughout this clause includes without limitation raw materials, components, intermediate assemblies, and end products) shall be subject to inspection and test by the Government, to the extent practicable at all times and places including the period of manufacture, and in any event prior to acceptance.

(b) In case any supplies or lots of supplies are defective in material or workmanship or otherwise not in conformity with the requirements of this contract, the Government shall have the right either to reject them (with or without instructions as to their disposition) or to require their correction. Supplies or lots of supplies which have been rejected or required to be corrected shall be removed or, if permitted or required by the Contracting Officer, corrected in place by and at the expense of the Contractor promptly after notice, and shall not thereafter be tendered for acceptance unless the former rejection or requirement of correction is disclosed. If the Contractor fails promptly to remove such supplies or lots of supplies which are required to be removed, or promptly to replace or correct such supplies or lots of supplies, the Government either (i) may by contract or otherwise replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby, or (ii) may terminate this contract for default as provided in the clause of this contract entitled "Default." Unless the Contractor corrects or replaces such supplies within the delivery schedule, the Contracting Officer may require the delivery of such supplies at a reduction in price which is equitable under the circumstances. Failure to agree to such reduction of price shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(c) If any inspection or test is made by the Government on the premises of the Contractor or a subcontractor, the Contractor without additional charge shall provide all reasonable facilities and assistance for the safety and convenience of the Government inspectors in the performance of their duties. If Government inspection or test is made at a point other than the premises of the Contractor or a subcontractor, it shall be at the expense of the Government except as otherwise provided in this contract: *Provided,* That in case of rejection the Government shall not be liable for any reduction in value of samples used in connection with such inspection or test. All inspections and tests by the Government shall be performed in such a manner as not to unduly delay the work. The Government reserves the right to charge to the Contractor any additional cost of Government inspection and test when supplies are not ready at the time such inspection and test is requested by the Contractor or when reinspection or retest is necessitated by prior rejection. Acceptance or rejection of the supplies shall be made as promptly as practicable after delivery, except as otherwise provided in this contract; but failure to inspect and accept or reject supplies shall neither relieve the Contractor from responsibility for such supplies as are not in accordance with the contract requirements nor impose liability on the Government therefor.

(d) The inspection and test by the Government of any supplies or lots thereof does not relieve the Contractor from any responsibility regarding defects or other failures to meet the contract requirements which may be discovered prior to acceptance. Except as otherwise provided in this contract, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(e) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the supplies hereunder. Records of all inspection work by the Contractor shall be kept complete and available to the Government during the performance of this contract and for such longer period as may be specified elsewhere in this contract.

6. Responsibility for Supplies

Except as otherwise provided in this contract, (i) the Contractor shall be responsible for the supplies covered by this contract until they are delivered at the designated delivery point, regardless of the point of inspection; (ii) after delivery to the Government at the designated point

SPECIMEN

STANDARD FORM 32
JUNE 1964 EDITION

32-103

(b) Page 2 of Standard Form 32.

and prior to acceptance by the Government or rejection and giving notice thereof by the Government, the Government shall be responsible for the loss or destruction of or damage to the supplies only if such loss, destruction, or damage results from the negligence of officers, agents, or employees of the Government acting within the scope of their employment; and (iii) the Contractor shall bear all risks as to rejected supplies after notice of rejection, except that the Government shall be responsible for the loss, or destruction of, or damage to the supplies only if such loss, destruction or damage results from the gross negligence of officers, agents, or employees of the Government acting within the scope of their employment.

7. PAYMENTS

The Contractor shall be paid, upon the submission of proper invoices or vouchers, the prices stipulated herein for supplies delivered and accepted or services rendered and accepted, less deductions, if any, as herein provided. Unless otherwise specified, payment will be made on partial deliveries accepted by the Government when the amount due on such deliveries so warrants; or, when requested by the Contractor, payment for accepted partial deliveries shall be made whenever such payment would equal or exceed either $1,000 or 50 percent of the total amount of this contract.

8. ASSIGNMENT OF CLAIMS

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to an assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the President pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

9. ADDITIONAL BOND SECURITY

If any surety upon any bond furnished in connection with this contract becomes unacceptable to the Government or if any such surety fails to furnish reports as to his financial condition from time to time as requested by the Government, the Contractor shall promptly furnish such additional security as may be required from time to time to protect the interests of the Government and of persons supplying labor or materials in the prosecution of the work contemplated by this contract.

10. EXAMINATION OF RECORDS

(The following clause is applicable if the amount of this contract exceeds $2,500 and was entered into by means of negotiation, but is not applicable if this contract was entered into by means of formal advertising.)

(a) The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving transactions related to this contract.

(b) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract. The term "subcontract" as used in this clause excludes (i) purchase orders not exceeding $2,500 and (ii) subcontracts or purchase orders for public utility services at rates established for uniform applicability to the general public.

11. DEFAULT

(a) The Government may, subject to the provisions of paragraph (c) below, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:

(i) If the Contractor fails to make delivery of the supplies or to perform the services within the time specified herein or any extension thereof; or

(ii) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(b) In the event the Government terminates this contract in whole or in part as provided in paragraph (a) of this clause, the Government may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those so terminated, and the Contractor shall be liable to the Government for any excess costs for such similar supplies or services: *Provided*, That the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

(c) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform, unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery schedule.

(d) If this contract is terminated as provided in paragraph (a) of this clause, the Government, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the Government, in the manner and to the extent directed by the Contracting Officer, (i) any completed supplies, and (ii) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing materials") as the Contractor has specifically produced or specifically acquired for the performance of such part of this contract as has been terminated; and the Contractor shall, upon direction of the Contracting Officer, protect and preserve property in possession of the Contractor in which the Government has an interest. Payment for completed supplies delivered

2

(c) Page 3 of Standard Form 32.

STANDARD FORM 32
JUNE 1964 EDITION

to and accepted by the Government shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the Government and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and Contracting Officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The Government may withhold from amounts otherwise due the Contractor for such completed supplies or manufacturing materials such sum as the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(e) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the Government, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the Government, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

(f) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

12. DISPUTES

(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the Contracting Officer shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting Officer a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision.

(b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (a) above: *Provided*, That nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

13. NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT

The provisions of this clause shall be applicable only if the amount of this contract exceeds $10,000.

(a) The Contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Contractor has knowledge.

(b) In the event of any claim or suite against the Government on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the Contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the Government except where the Contractor has agreed to indemnify the Government.

14. BUY AMERICAN ACT

(a) In acquiring end products, the Buy American Act (41 U.S. Code 10 a–d) provides that the Government give preference to domestic source end products. For the purpose of this clause:

(i) "components" means those articles, materials, and supplies, which are directly incorporated in the end products;

(ii) "end products" means those articles, materials, and supplies, which are to be acquired under this contract for public use; and

(iii) a "domestic source end product" means (A) an unmanufactured end product which has been mined or produced in the United States and (B) an end product manufactured in the United States if the cost of the components thereof which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. For the purposes of this (a)(iii)(B), components of foreign origin of the same type or kind as the products referred to in (b)(ii) or (iii) of this clause shall be treated as components mined, produced, or manufactured in the United States.

(b) The Contractor agrees that there will be delivered under this contract only domestic source end products, except end products:

(i) which are for use outside the United States;

(ii) which the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and, of a satisfactory quality;

(iii) as to which the Secretary determines the domestic preference to be inconsistent with the public interest; or

(iv) as to which the Secretary determines the cost to the Government to be unreasonable.

(The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954.)

15. CONVICT LABOR

In connection with the performance of work under this contract, the Contractor agrees not to employ any person undergoing sentence of imprisonment at hard labor.

16. CONTRACT WORK HOURS STANDARDS ACT—OVERTIME COMPENSATION

This contract, to the extent that it is of a character specified in the Contract Work Hours Standard Act (40 U.S.C. 327-330), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(a) Overtime requirements. No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of eight hours in any calendar day or in excess of forty hours in such workweek, whichever is the greater number of overtime hours.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions of paragraph (a), the Contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of $10 for

STANDARD FORM 32
JUNE 1964 EDITION

3

(d) Page 4 of Standard Form 32.

each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of the standard work-week of forty hours without payment of the overtime wages required by paragraph (a).

(c) Withholding for unpaid wages and liquidated damages. The Contracting Officer may withhold from the Government Prime Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions of paragraph (b).

(d) Subcontracts. The Contractor shall insert paragraphs (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(e) Records. The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

17. WALSH-HEALEY PUBLIC CONTRACTS ACT

If this contract is for the manufacture or furnishing of materials, supplies, articles, or equipment in an amount which exceeds or may exceed $10,000 and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S. Code 35–45), there are hereby incorporated by reference all representations and stipulations required by said Act and regulations issued thereunder by the Secretary of Labor, such representations and stipulations being subject to all applicable rulings and interpretations of the Secretary of Labor which are now or may hereafter be in effect.

18. EQUAL OPPORTUNITY

(The following clause is applicable unless this contract is exempt under the rules and regulations of the President's Committee on Equal Employment Opportunity (41 CFR, Chapter 60). Exemptions include contracts and subcontracts (i) not exceeding $10,000, (ii) not exceeding $100,000 for standard commercial supplies or raw materials, and (iii) under which work is performed outside the United States and no recruitment of workers within the United States is involved.)

During the performance of this contract, the Contractor agrees as follows:

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Contracting Officer setting forth the provisions of this nondiscrimination clause.

(b) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(c) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency Contracting Officer, advising the said labor union or workers' representative of the Contractor's commitments under this nondiscrimination clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(e) The Contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the Contractor's noncompliance with the nondiscrimination clause of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(g) The Contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor.* The Contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Unless otherwise provided, the Equal Opportunity Clause is not required to be inserted in subcontracts below the second tier except for subcontracts involving the performance of "construction work" at the "site of construction" (as those terms are defined in the Committee's rules and regulations) in which case the clause must be inserted in all such subcontracts. Subcontracts may incorporate by reference the Equal Opportunity Clause.

19. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

20. COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

21. UTILIZATION OF SMALL BUSINESS CONCERNS

(a) It is the policy of the Government as declared by the Congress that a fair proportion of the purchases and contracts for supplies and services for the Government be placed with small business concerns.

(b) The Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract.

22. UTILIZATION OF CONCERNS IN LABOR SURPLUS AREAS

(The following clause is applicable if this contract exceeds $5,000.)

It is the policy of the Government to place contracts with concerns which will perform such contracts substantially in areas of persistent or substantial labor surplus where this can be done, consistent with the efficient performance of the contract, at prices no higher than are obtainable elsewhere. The Contractor agrees to use his best efforts to place his subcontracts in accordance with this policy. In complying with the foregoing and with paragraph (b) of the clause of this contract entitled "Utilization of Small Business Concerns," the Contractor in placing his subcontracts shall observe the following order of preference: (I) persistent labor surplus area concerns which are also small business concerns; (II) other persistent labor surplus area concerns; (III) substantial labor surplus area concerns which are also small business concerns; (IV) other substantial labor surplus area concerns; and (V) small business concerns which are not labor surplus area concerns.

SPECIMEN

§ 1–16.901–33 Standard Form 33: Invitation, Bid, and Award (Supply Contract).

(a) Page 1 of Standard Form 33.

STANDARD FORM 33
OCTOBER 1957 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.101

INVITATION, BID, AND AWARD
(SUPPLY CONTRACT)

CONTRACT NO.
ORDER NO. (If any)
PAGE NO. 1
NUMBER OF PAGES

ISSUED BY
ADDRESS

INVITATION FOR BIDS

DATE ISSUED
INVITATION NO.

Sealed bids in _____, subject to (1) the Terms and Conditions of the Invitation for Bids, (2) the accompanying Schedule, (3) General Provisions (Standard Form 32, _____ edition), which are incorporated herein by reference, and (4) such other contract provisions and specifications as are attached or incorporated by reference in the Schedule, will be received at the above office until _____ o'clock _____ m., _____ Time, _____ (date) and at that time publicly opened, for furnishing the supplies or services described in the accompanying Schedule, for delivery f. o. b. _____

General information and instructions to bidders are contained in the terms and conditions on the reverse hereof.

SCHEDULE

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (No. of units)	UNIT	UNIT PRICE	AMOUNT

SPECIMEN

BID → DATE OF BID

In compliance with the above, the undersigned offers and agrees, if this Bid be accepted within _____ calendar days (*60 calendar days unless a different period be inserted by the bidder*) from the date of opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, delivered at the designated point(s) within the time specified in the Schedule. Discounts will be allowed for prompt payment as follows:

_____ percent, 10 calendar days; _____ percent, 20 calendar days; _____ percent, 30 calendar days.

BIDDER REPRESENTS: (*Check appropriate boxes*)

(1) That he ☐ is, ☐ is not, a small business concern. (*See definition on reverse hereof.*) If bidder is a small business concern and is not the manufacturer of the supplies bid upon, he also represents that all supplies to be furnished hereunder ☐ will, ☐ will not, be manufactured or produced by a small business concern in the United States, its Territories, its possessions, or the Commonwealth of Puerto Rico.

(2) That he is a ☐ regular dealer in, ☐ manufacturer of, the supplies bid upon.

(3) (*a*) That he ☐ has, ☐ has not, employed or retained any company or person (other than a full-time bona fide employee working solely for the bidder) to solicit or secure this contract, and (*b*) that he ☐ has, ☐ has not, paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the bidder) any fee, commission, percentage or brokerage fee, contingent upon or resulting from the award of this contract; and agrees to furnish information relating to (*a*) and (*b*) above as requested by the Contracting Officer.
(*For interpretation of the representation, including the term "bona fide employee," see Code of Federal Regulations, Title 41, Part 1-1.*)

(4) He operates as an ☐ individual, ☐ partnership, ☐ corporation, incorporated in the State of _____

NAME AND ADDRESS OF BIDDER (*Street, city, zone, and State. Type or print*)

SIGNATURE OF PERSON AUTHORIZED TO SIGN BID
→

TYPE OR PRINT SIGNER'S NAME AND TITLE

AWARD

ACCEPTED AS TO ITEMS NUMBERED
AMOUNT $

DATE OF AWARD

UNITED STATES OF AMERICA
BY _____
Contracting Officer.

SUBMIT INVOICE FOR PAYMENT TO

ACCOUNTING AND APPROPRIATION DATA

PAYMENT WILL BE MADE BY

Award will be made on this Form, or on Standard Form 26, or by other official written notice.

(b) Page 2 of Standard Form 33.

TERMS AND CONDITIONS OF THE INVITATION FOR BIDS

1. PREPARATION OF BIDS.—(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the bid form. The bidder shall print or type his name on the Schedule and each Continuation Sheet thereof on which he makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent must be accompanied by evidence of his authority.

(c) Unit price for each unit bid on shall be shown and such price shall include packing unless otherwise specified. A total shall be entered in the Amount column of the Schedule for each item bid on. In case of error in extension of price, the unit price will govern.

(d) Alternate bids will not be considered unless authorized by the Invitation.

(e) When not otherwise specified, bidder must definitely state time of proposed delivery.

(f) Time, if stated as a number of days, will include Sundays and holidays.

2. SUBMISSION OF BIDS.—(a) Bids and modifications thereof shall be enclosed in sealed envelopes addressed to the issuing office, with the name and address of the bidder, the date and hour of opening, and the invitation number on the face of the envelope. Telegraphic bids will not be considered unless authorized by the Invitation; however, bids may be modified by telegraphic notice provided such notice is received prior to the time set for the opening of the bids.

(b) Samples of items, when required, must be submitted within the time specified, and unless otherwise specified by the Government, at no expense to the Government. If not destroyed by testing, samples will be returned at bidder's request and expense, unless otherwise specified by the Invitation.

(c) In the event no bid is to be submitted, do not return the Invitation unless otherwise specified. However, a letter or post card should be sent to the issuing office advising whether future Invitations for the type of supplies or services covered by this Invitation are desired.

3. WITHDRAWAL OF BIDS.—Bids may be withdrawn by written or telegraphic notice (see 4 below).

4. LATE BIDS.—Bids and modifications or withdrawals thereof received after the time set for opening will not be considered, unless they are received before the award is made, and it is determined by the Government that failure to arrive on time was due solely to delay in the mails for which the bidder was not responsible.

5. GOVERNMENT-FURNISHED PROPERTY.—No material, labor, or facilities will be furnished by the Government unless otherwise provided for in the Invitation.

6. LABOR INFORMATION.—Attention is invited to the possibility that wage determinations may have been made under the Walsh-Healey Public Contracts Act providing minimum wages for employees engaged in the manufacture for sale to the Government of the supplies covered by this Invitation for Bids. Information in this connection, as well as general information as to the requirements of the Act concerning overtime payment, child labor, safety and health provisions, etc., may be obtained from the Wage and Hour and Public Contracts Divisions, Department of Labor, Washington 25, D. C. Requests for information should state the Invitation number, the issuing agency and the supplies covered.

7. DISCOUNTS.—(a) Prompt-payment discounts will be included in the evaluation of bids, provided the period of the offered discount is sufficient to permit payment within such period in the regular course of business under the delivery, inspection, and payment provisions of the Invitation and Bid.

(b) In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when delivery and acceptance are at point of origin, or from date of delivery at destination or port of embarkation when delivery and acceptance are at either of those points, or from date correct invoice or voucher is received in the office specified by the Government if the latter date is later than the date of delivery. Payment is deemed to be made, for the purpose of earning the discount, on the date of mailing of the Government check.

8. AWARD OF CONTRACT.—(a) The contract will be awarded to that responsible bidder whose bid, conforming to the Invitation for Bids, will be most advantageous to the Government, price and other factors considered.

(b) The Government reserves the right to reject any or all bids and to waive informalities and minor irregularities in bids received.

(c) The Government may accept any item or group of items of any bid, unless the bidder qualifies his bid by specific limitations. UNLESS OTHERWISE PROVIDED IN THE SCHEDULE, BIDS MAY BE SUBMITTED FOR ANY QUANTITIES LESS THAN THOSE SPECIFIED; AND THE GOVERNMENT RESERVES THE RIGHT TO MAKE AN AWARD ON ANY ITEM FOR A QUANTITY LESS THAN THE QUANTITY BID UPON AT THE UNIT PRICES OFFERED UNLESS THE BIDDER SPECIFIES OTHERWISE IN HIS BID.

(d) A written award mailed (or otherwise furnished) to the successful bidder within the time for acceptance specified in the bid shall be deemed to result in a binding contract without further action by either party.

9. SELLER'S INVOICES.—Invoices shall be prepared and submitted in quadruplicate unless otherwise specified. Invoices shall contain the following information: Contract and order number (if any), item numbers, description of supplies or services, sizes, quantities, unit prices, and extended totals. Bill of lading number and weight of shipment will be shown for shipments made on Government bills of lading.

10. DEFINITION OF SMALL BUSINESS.—Generally, a small business concern for the purpose of Government procurement is a concern that (1) is not dominant in its field of operation and, with its affiliates, employs fewer than 500 employees, or (2) is certified as a small business concern by Small Business Administration. *(See Code of Federal Regulations, Title 13, Part 103, as amended, which contains the detailed definition and related procedures.)*

§ 1-16.901-34 Standard Form 34: Annual Bid Bond.

(a) Page 1 of Standard Form 34.

STANDARD FORM 34
JUNE 1964 EDITION
GENERAL SERVICES ADMINISTRATION
FPR (41 CFR) 1-16.801

34-103

ANNUAL BID BOND
(See instructions on reverse)

DATE BOND EXECUTED

PRINCIPAL *(Legal name and business address)*

TYPE OF ORGANIZATION ("X" ONE)
☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) *(Name, business address, and State of incorporation)*

DEPARTMENT OR AGENCY TO WHICH BIDS ARE TO BE SUBMITTED

BIDS TO BE SUBMITTED DURING FISCAL YEAR ENDING
June 30, 19.....

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal and Surety(ies) hereto, are firmly bound to the United States of America (hereinafter called the Government) in such penal sum or sums as shall be sufficient to indemnify the Government in case of the default of the said Principal as hereinafter set forth, for the payment of which we bind ourselves, our heirs, executors, administrators, and succesors, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal contemplates submitting bids from time to time during the fiscal year above shown to the department or agency named above for furnishing supplies or services to the Government and desires that all such bids submitted for opening during said fiscal year be covered by a single bond instead of by a separate bid bond for each bid.

NOW, THEREFORE, if the Principal upon acceptance by the Government of any such bid within the period specified therein for acceptance (sixty (60) days if no period is specified), shall execute such further contractual documents, if any, and give bond(s) as may be required by the terms of the bid as accepted within the time specified (ten (10) days if no period is specified) after receipt of forms by him, or in the event of failure so to execute such further contractual documents and give such bond(s), if the Principal shall pay the Government for any cost of procuring the work which exceeds the amount of his bid, then the above obligation shall be void and of no effect.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this bid bond and have affixed their seals on the date set forth above.

SIGNATURES	NAMES AND TITLES (Typed)	
PRINCIPAL		
1. [SEAL]	1.	[CORPORATE SEAL]
2. [SEAL]	2.	
INDIVIDUAL SURETIES		
1. [SEAL]	1.	
2. [SEAL]	2.	
CORPORATE SURETY		
1.	1.	[CORPORATE SEAL]
2.	2.	

SPECIMEN

(b) Page 2 of Standard Form 34.

INSTRUCTIONS

1. This form may be used in connection with the procurement of supplies or services, excluding construction, in lieu of Standard Form 24 (Bid Bond). There shall be no deviation from this form without approval by the Administrator of General Services.

2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.

3. (a) Where a corporation executes the bond, it must be one appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein.

(b) Where individual sureties execute the bond, they shall be two or more responsible persons. A completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. Such sureties may be required to furnish additional substantiating information concerning their assets and financial capability as the Government may require.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal;" and, if executed in Maine or New Hampshire, shall also affix an adhesive seal.

5. The name of each person signing this annual bid bond should be typed in the space provided.

SUPERSEDED BY EFFECTIVE

§ 1-16.901-35 Standard Form 35: Annual Performance Bond.

(a) Page 1 of Standard Form 35.

Standard Form 35
June 1964 Edition
General Services Admin.
FPR (41 CFR 1-16.901)

35-103

ANNUAL PERFORMANCE BOND
(See Instructions on reverse)

DATE BOND EXECUTED

PRINCIPAL (*Legal name and business address*)

TYPE OF ORGANIZATION ("X" ONE)
☐ INDIVIDUAL ☐ PARTNERSHIP
☐ JOINT VENTURE ☐ CORPORATION

STATE OF INCORPORATION

SURETY(IES) (*Name, business address and State of incorporation*)

PENAL SUM OF BOND

MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENT(S)

FISCAL YEAR ENDING
June 30, 19

DEPARTMENT OR AGENCY REPRESENTING THE GOVERNMENT

KNOW ALL MEN BY THESE PRESENTS, That we, the Principal and Surety(ies) hereto, are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal contemplates entering into contracts, from time to time during the fiscal year above shown, with the Government, represented by the department or agency shown above, for furnishing supplies or services to the Government, and desires that all such contracts be covered by one bond instead of by separate performance bond for each contract.

NOW, THEREFORE, if the Principal shall perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all such contracts so entered into during the original term thereof and any extensions that may be granted by the Government, with or without notice to the surety(ies) and during the life of any guaranty required under the contracts, and shall also perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of such contracts, that may hereafter be made, notice of which modifications to the surety(ies) being hereby waived, then the above obligation shall be void and of no effect.

IN WITNESS WHEREOF, the Principal and Surety(ies) have executed this performance bond and have affixed their seals on the date set forth above.

SIGNATURES	NAMES AND TITLES (Typed)	
PRINCIPAL		
1. (Seal)	1.	(Corporate Seal)
2. (Seal)	2.	
INDIVIDUAL SURETIES		
1. (Seal)	1.	
2. (Seal)	2.	
CORPORATE SURETY		
1.	1.	(Corporate Seal)
2.	2.	

SUPERSEDED BY EFFECTIVE

(b) Page 2 of Standard Form 35.

INSTRUCTIONS

1. This form may be used in connection with the procurement of supplies or services, excluding construction, in lieu of Standard Form 25 (Performance Bond). There shall be no deviation from this form without approval by the Administrator of General Services.

2. The full legal name and business address of the Principal shall be inserted in the space designated "Principal" on the face of this form. The bond shall be signed by an authorized person. Where such person is signing in a representative capacity (e.g., an attorney-in-fact), but is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved, evidence of his authority must be furnished.

3. (a) Where a corporation executes the bond, it must be one appearing on the Treasury Department's list of approved sureties and must be acting within the limitations set forth therein.

(b) Where individual sureties execute the bond, they shall be two or more responsible persons. A completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. Such sureties may be required to furnish additional substantiating information concerning their assets and financial capability as the Government may require.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the word "Seal"; and, if executed in Maine or New Hampshire, shall also affix an adhesive seal.

5. The name of each person signing this annual performance bond should be typed in the space provided.

SPECIMEN

§ 1-16.901-36 Standard Form 36: Continuation Sheet (Supply Contract).

STANDARD FORM 36
NOVEMBER 1949 EDITION
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.101

CONTINUATION SHEET
(SUPPLY CONTRACT)

CONTRACT, ORDER, OR INVITATION NO. (As applicable)

PAGE NO.

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY (Number of units)	UNIT	UNIT PRICE	AMOUNT

NAME OF BIDDER OR CONTRACTOR

(Standard Form 36
Nov. 1949 Edition)

SPECIMEN

§ 1-16.901-37 Standard Form 37: Report on Procurement by Civilian Executive Agencies.

(a) Page 1 of Standard Form 37.

STANDARD FORM 37 JUNE 1961 EDITION GENERAL SERVICES ADMIN. F.P.R. (41 CFR) 1-16.904	REPORT ON PROCUREMENT BY CIVILIAN EXECUTIVE AGENCIES (See Instructions on reverse)	PERIOD COVERED ☐ JANUARY 1 THROUGH JUNE 30, 19___ ☐ JULY 1 THROUGH DECEMBER 31, 19___

REPORTING AGENCY (Bureau, Office)

REFER QUESTIONS TO (Name)	TITLE	TELEPHONE NO.

PROCUREMENTS REPORTED (a)	NET DOLLAR AMOUNT PROCURED (Omit cents) TOTAL (c)+(d) (b)	SIZE OF BUSINESS CONCERN (c) SMALL	(d) OTHER
1. TOTAL (2+7)			
2. PROCUREMENTS OF MORE THAN $100 AWARDED BY REPORTING AGENCY (3+4)			
3. FORMALLY ADVERTISED			
4. NEGOTIATED (5+6)			
5. SMALL BUSINESS SET-ASIDES			
6. OTHER NEGOTIATED			
7. PROCUREMENTS OF MORE THAN $100 FROM ESTABLISHED SOURCES			

REMARKS

SPECIMEN

APPROVED BY (Signature)	TITLE	DATE

(b) Page 2 of Standard Form 37.

I. GENERAL INSTRUCTIONS

A. Procurements to be Reported.
Except as otherwise provided herein, the report shall include the dollar amount of all types of commitments which obligate the Government to an expenditure of funds for property and services (including maintenance, repair and construction of buildings, roads, etc.; and research and development).

B. Procurements to be Excluded.
Exclude procurements:

(1) Which are $100 or less.
(2) By use of imprest funds (petty cash) and credit cards.
(3) At stations or offices for which total annual transactions, of the types covered by this report, are less than $2,500.
(4) From Federal sources of supply, such as: District of Columbia Government, Federal Prison Industries, Inc., Government Printing Office, General Services Administration (stores depots, fuel yard, consolidated and special purchasing service, repair shops and furniture rehabilitation service, and excess property).
(5) From educational and nonprofit institutions.
(6) Of blind-made products under the Act of June 25, 1938 (41 U.S.C. 46-48).
(7) By activities outside the United States, and from foreign contractors.
(8) Of transportation and public utilities services.
(9) Of land and easements; leasing of space; acquisition of property by foreclosure.
(10) Under the Defense Production Act of 1950, as amended.
(11) For price support, grants to farmers, or stabilization; of agricultural commodities for transfer to foreign governments or for foreign aid, relief, or rehabilitation; and under section 6 of the Farm Credit Act of 1937, as amended (12 U.S.C. 640f).

C. Net Dollar Amount Procured.
"Net Dollar Amount Procured" means the actual or estimated cost to the Government of the property or services procured. In most instances, this is the obligation incurred. (When property is exchanged or sold in connection with a transaction, the exchange or sale amount shall not be deducted from the purchase price.) To the extent practicable, cancellations, amendments, modifications, change orders, and supplemental agreements shall be reported.

D. Definition of Small Business Concern.
"Small Business Concern" means any firm which meets the criteria established by Title 13, Chapter 1, Part 121 of the Code of Federal Regulations.

SPECIMEN

II. LINE ENTRIES

Line 3. Enter the dollar amount of reportable contracts awarded by the reporting agency which involved formal solicitation of bids, public opening of bids, and award, in conformance with the invitation for bids.

Line 5. Enter the dollar amount of reportable contracts awarded by the reporting agency under "Small Business Restricted Advertising" procedures (FPR Subpart 1-1.7), and as a result of other small business set-asides.

Line 6. Enter the dollar amount of reportable contracts awarded by the reporting agency not included on Lines 3 and 5.

Line 7. Enter the dollar amount of procurements under contracts which have been entered into by another agency, from non-Federal established sources of supply including purchase orders placed with commercial suppliers under Federal Supply Schedule contracts, GSA local service contracts, Military Petroleum Supply Agency contracts, District of Columbia contracts, and other indefinite quantity contracts.

REMARKS: Include information on transactions having a significant influence on the small business share of total procurement.

§ 1-16.901-40 Standard Form 40: Compliance Report (Nondiscrimination Provisions of U.S. Government Contracts).

(a) Page 1 of Standard Form 40.

Standard Form 40 (Revised)
FEBRUARY 1964
PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY
41 CFR CH. 60 48-102

COMPLIANCE REPORT
NONDISCRIMINATION PROVISIONS OF U.S. GOVERNMENT CONTRACTS

IMPORTANT
- Read the attached instructions before preparing this report.
- Complete all items unless otherwise instructed. If an item does not apply, mark "N/A."
- Use Item 24 (*Remarks*) and additional sheets if more space is needed, and identify the continued item.
- Prepare, sign and submit three reports for each reporting unit of the company.

Submit all reports in triplicate directly to:
THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY
SURVEY DIVISION—COMPLIANCE REPORTS
WASHINGTON, D.C. 20210

▶ To be completed by the contracting or administering officer or prime contractor requesting these reports

NAME AND TITLE OF OFFICIAL REQUESTING REPORT	AGENCY OR PRIME CONTRACTOR (*Name and address*)	REPORT TO BE SUBMITTED ON OR BEFORE
		PREDOMINANT INTEREST AGENCY OF THE PRIME CONTRACTOR

PART I—CROSS REFERENCE IDENTIFICATION

COMPANY-WIDE IDENTIFICATION

1. COMPANY-WIDE REPORTING STATUS (*A subcontractor who is also a prime contractor shall report as a prime contractor.*)
A. (*Check one box only*)
☐ PRIME CONTRACTOR
☐ FIRST-TIER SUBCONTRACTOR
B. PREDOMINANT INTEREST AGENCY FOR COMPANY AS A WHOLE (*Subcontractors shall give both their Predominant Interest Prime Contractor and that company's Predominant Interest Agency—see instructions 2j and 2k.*)

CODES (*Leave blank*)

2A. NAME AND ADDRESS OF PRINCIPAL OFFICE OF THE COMPANY
2B. EMPLOYER IDENTIFICATION NO.
2C. REPORTING UNIT NO.

3A. NAME AND ADDRESS OF PARENT COMPANY IF AN AFFILIATED CORPORATION
3B. EMPLOYER IDENTIFICATION NO.

4. (TO BE *completed* ONLY IF THIS IS A REPORT FOR THE PRINCIPAL OFFICE OF A COMPANY)
A. TOTAL EMPLOYMENT FOR THE COMPANY AS A WHOLE:
B. TOTAL NUMBER OF REPORTING UNITS IN THE COMPANY:

REPORTING UNIT IDENTIFICATION

5A. NAME OF REPORTING UNIT COVERED BY THIS REPORT
5B. REPORTING UNIT NO.

6. LOCATION OF THIS REPORTING UNIT (*City, county, State*)

7. MAJOR ACTIVITY AT THIS REPORTING UNIT

PREVIOUS REPORTS

8. DATE LAST REPORT SUBMITTED FOR THIS REPORTING UNIT
9. PREDOMINANT INTEREST AGENCY FOR LAST REPORT

10. GIVE ANY IDENTIFICATION DATA APPEARING ON LAST REPORT WHICH DIFFERS FROM THAT GIVEN ABOVE

SUBCONTRACTS

	YES	NO
11. IS THE NONDISCRIMINATION CLAUSE INCLUDED IN ALL YOUR SUBCONTRACTS SUBJECT TO EXECUTIVE ORDERS 10925? AND 11114?	YES	NO
12. HAVE ALL YOUR SUBCONTRACTORS COVERED BY THESE REPORTING REQUIREMENTS BEEN INSTRUCTED TO FILE COMPLIANCE REPORTS WITH THE COMMITTEE AND BEEN FURNISHED WITH REPORT FORMS AND INSTRUCTIONS?	YES	NO

PART II—POLICIES AND PRACTICES

		YES	NO
EMPLOYMENT POLICIES	13A. HAS A COMPANY-WIDE EMPLOYMENT POLICY BEEN ESTABLISHED WITH PROCEDURES PUT INTO EFFECT TO ASSURE THAT EQUAL OPPORTUNITY IS GIVEN TO ALL PERSONS WITHOUT REGARD TO RACE, COLOR, CREED, OR NATIONAL ORIGIN?		
	B. IF "YES," HAS IT BEEN COMMUNICATED IN WRITING TO ALL EMPLOYEES AND OFFICES OF THIS REPORTING UNIT? (*If by other means, explain in Item 24.*)		
	14A. ARE THERE ANY EDUCATIONAL OR FORMAL TRAINING PROGRAMS FOR EMPLOYEES OR PROSPECTIVE EMPLOYEES?		
	B. IF "YES," ARE ALL PERSONS GIVEN THE OPPORTUNITY TO PARTICIPATE WITHOUT REGARD TO RACE, COLOR, CREED, OR NATIONAL ORIGIN?		
RECRUITMENT AND ADVERTISING	15A. HAVE ALL RECRUITMENT SOURCES (*other than unions*) BEEN NOTIFIED THAT ALL QUALIFIED APPLICANTS WILL RECEIVE CONSIDERATION FOR EMPLOYMENT WITHOUT REGARD TO RACE, COLOR, CREED, OR NATIONAL ORIGIN?		
	B. HAS THIS BEEN DONE IN WRITING? (*If by other means, explain in Item 24.*)		
	16. DO ALL EMPLOYMENT RECRUITING ADVERTISEMENTS STATE THAT ALL QUALIFIED APPLICANTS WILL RECEIVE CONSIDERATION FOR EMPLOYMENT WITHOUT REGARD TO RACE, COLOR, CREED, OR NATIONAL ORIGIN?		

(b) Page 2 of Standard Form 40.

		YES	NO
ORGANIZATIONS OF WORKERS	17. HAS A COLLECTIVE BARGAINING AGREEMENT OR OTHER CONTRACT OR UNDERSTANDING BEEN MADE WITH A LABOR UNION (*or unions*) WHICH REPRESENTS EMPLOYEES IN THIS REPORTING UNIT?		
	18A. IF "YES," DO ALL PROVISIONS OF EACH AGREEMENT PERMIT FULL COMPLIANCE BY THE COMPANY WITH ITS OBLIGATIONS UNDER THE NONDISCRIMINATION PROVISIONS OF GOVERNMENT CONTRACTS? IF "NO" EXPLAIN IN ITEM 24.		
	B. HAS THE NOTICE (*Standard Form 30*) ADVISING THE UNION OF THE COMPANY'S OBLIGATIONS UNDER THE NONDISCRIMINATION PROVISIONS OF GOVERNMENT CONTRACTS BEEN SENT TO EACH UNION?		
	C. HAS EACH SUCH UNION NOTIFIED THE COMPANY THAT ITS POLICIES AND PRACTICES ARE CONSISTENT WITH THESE NONDISCRIMINATION PROVISIONS? IF "NO," IDENTIFY SUCH UNION(S) AND DESCRIBE ANY EFFORTS TO OBTAIN SUCH INFORMATION AND COMMITMENTS.		
OTHER	19. ARE THERE ANY EMPLOYEE FACILITIES (*i.e., drinking fountains, restrooms, recreational areas, lunchrooms, etc.*) AT THIS REPORTING UNIT WHICH ARE PROVIDED FOR EMPLOYEES ON A RACIALLY SEPARATE BASIS?		

PART III—EMPLOYMENT STATISTICS

20. EMPLOYMENT AT THIS REPORTING UNIT (*for pay period ending nearest 15th of month preceding that in which this report is due.*)

OCCUPATIONS	MALE EMPLOYEES					FEMALE EMPLOYEES					TOTAL ALL EMPLOYEES
	TOTAL MALES	MINORITY GROUPS				TOTAL FEMALES	MINORITY GROUPS				
		NEGRO	ORIENTAL*	AMERICAN INDIAN*	SPANISH AMERICAN*		NEGRO	ORIENTAL*	AMERICAN INDIAN*	SPANISH AMERICAN*	
OFFICIALS AND MANAGERS											
PROFESSIONALS											
TECHNICIANS											
SALES WORKERS											
OFFICE AND CLERICAL											
CRAFTSMEN (*Skilled*)											
OPERATIVES (*Semiskilled*)											
LABORERS (*Unskilled*)											
SERVICE WORKERS											
TOTAL											
21. TOTAL EMPLOYMENT ONE YEAR AGO (*If available*)											
22. (*Figures for the following classifications shall also be included in the appropriate category above the "Total" line.*)											
APPRENTICES											
ON-THE-JOB TRAINEES** WHITE COLLAR											
ON-THE-JOB TRAINEES** PRODUCTION											

*SEE PARAGRAPH 3C OF THE INSTRUCTIONS. **REPORT ONLY EMPLOYEES ENROLLED IN FORMAL ON-THE-JOB TRAINING PROGRAMS.

23. DESCRIBE BRIEFLY HOW EMPLOYMENT STATISTICS WERE OBTAINED (*e.g., visual check, available employment records, etc.*)

24. REMARKS (*If additional space is needed, attach a separate sheet and identify the applicable items.*)

25A. DATE	25B. TYPE OR PRINT NAME, TITLE, AND ADDRESS OF AUTHORIZED REPRESENTATIVES	25C. SIGNATURE OF AUTHORIZED REPRESENTATIVE

WILLFULLY FALSE STATEMENTS ON THIS REPORT ARE PUNISHABLE BY LAW. U.S. CODE, TITLE 18, SEC. 1001

SPECIMEN

(c) Page 1 of Instructions, Standard Form 40 and 40–A.

INSTRUCTIONS
STANDARD FORMS 40 AND 40-A (Revised)
FEBRUARY 1964
THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY
41 CFR CH. 60

COMPLIANCE REPORT
Nondiscrimination Provisions of U.S. Government Contracts

INSTRUCTIONS

1. General

a. Executive Order 10925, dated March 6, 1961, as amended by Executive Order 11114, dated June 22, 1963, and the rules and regulations promulgated pursuant thereto, require that each contractor subject to the Order shall file and cause each of its subcontractors to file compliance reports with the contracting agency or the administering agency, as the case may be, or the Committee, in accordance with the instructions attached to the official compliance report forms.

b. Each prime contractor and first-tier subcontractor subject to these Orders who has a contract, subcontract, or purchase order for $50,000 or more (or $100,000 or more if solely for standard commercial supplies and raw materials) *and* who also has 50 or more employees shall file compliance reports. All other contractors and subcontractors shall be required to file compliance reports upon the request of the Executive Vice Chairman of the Committee.

c. In the event a prime contractor or first-tier subcontractor is a multi-establishment company, a separate compliance report shall be filed for *each* reporting unit of the company, as provided for in paragraph 3 of these instructions, including the principal office of the company.

(NOTE.—These revised instructions require compliance reports covering all employees and activities of the company, including facilities which may not be performing any work directly or indirectly under any Government contracts or Federally assisted construction contracts.)

d. Companies participating in the "Plans for Progress" program shall file establishment reports in accordance with the instructions attached to the official "Plans for Progress Report" form (Form EEO-10, Budget Bureau No. 44-R1174.1) in lieu of this report form. "Plans for Progress" employers who are prime contractors will continue to have the obligation of causing each of their first-tier subcontractors to file compliance reports in accordance with these instructions, but no prime contractor shall have such an obligation as to those first-tier subcontractors who are "Plans for Progress" employers. It should be noted that Form 40–A is to be filed by *all* employers, including "Plans for Progress" employers (see paragraph 5 of these instructions).

e. Employers having contracts, subcontracts or purchase orders for construction, repair and/or alteration or for materials to be used therein but who themselves perform no construction work at the site of construction shall file Standard Form 40 as provided for in these instructions. Employers who have contracts, subcontracts or purchase orders for construction, repair and/or alteration involving the actual performance of any construction work at the site of construction shall not file Standard Form 40 for those activities but shall file Standard Form 41 (Compliance Report—Construction) in accordance with the instructions attached to that form.

2. Definitions

a. "Order" means Executive Order 10925, dated March 6, 1961, *and* Executive Order 11114, dated June 22, 1963, which supplements and extends the authority of the prior Order.

b. "Committee" means the President's Committee on Equal Employment Opportunity established under the provisions of Executive Order 10925.

c. "Contract" means any Government contract or any Federally assisted construction contract.

d. "Prime contractor" means any employer having a Government contract or any Federally assisted construction contract.

e. "First-tier subcontractor" means any employer having a contract with a prime contractor calling for supplies or services required for the performance of a Government contract or Federally assisted construction contract.

(NOTE.—A first-tier subcontractor who is also subject to these reporting requirements as a prime contractor shall be considered a prime contractor for the purposes of filing compliance reports.)

f. "Contracting agency" means any department (including the Departments of the Army, Navy, and Air Force), agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which enters into contracts.

g. "Administering agency" means any department (including the Departments of the Army, Navy, and Air Force), agency and establishment in the Executive Branch of the Government, including any wholly owned Government corporation, which administers a program involving Federally assisted construction contracts.

h. "Employer identification number" is the 9-digit number which each legal entity (corporation, partnership, or sole proprietorship) has been assigned as its employer identification number on the basis of its application (Form SS–4) to Internal Revenue Service for an identification number. This number should also be used on all compliance reports and communications concerning these reports.

(NOTE.—Affiliates of companies, if separately incorporated, are considered as legal entities for purposes of filing these reports. As such, they are treated as distinct employers and are required to file separate compliance reports if subject to the provisions and reporting requirements of the Executive Orders.)

i. The terms, *"reporting unit"* and *"reporting unit number"* apply only to multi-establishment companies. They refer to an establishment or a single place of business, except as provided for in paragraph 3 of these instructions. This concept of reporting unit substantially follows the same reporting unit basis which is used by multi-establishment companies in filing their Quarterly Tax Reports with the Social Security Administration on Form 941 under the Establishment Reporting Plan. Each reporting unit is identified by a "reporting unit number" which is used by the company in filing such reports.

(NOTE.—In the event the company does not participate in the Establishment Reporting Plan of the Social Security Administration, this should be indicated in Item 24 of Standard Form 40 and the payroll office or comptroller should assign an arbitrary "reporting unit number" of four or less numerical digits to each reporting unit of the company.)

j. "Principal office of the company" means the central administrative office of the legal entity (corporation, partnership, or single proprietorship) regardless of affiliation, stock ownership, or control.

k. "Predominant Interest Agency" is a designation given to the contracting or administering agency which has primary responsibility for the administration of the company's obligations under these Executive Orders, despite the fact that the company may hold contracts with, or have the assistance of, other Government agencies. The Predominant Interest Agency for a prime contractor will be, unless the company is otherwise notified by the Committee, the contracting or administering agency having, or assisting with, the largest aggregate dollar value of prime contracts with THE COMPANY AS A WHOLE at the time of the filing of the latest compliance reports for the company. The Predominant Interest Agency for a first-tier subcontractor will be, unless the company is otherwise notified by the Committee, the same Predominant Interest Agency as is designated for its Predominant Interest Prime Contractor.

l. "Predominant Interest Prime Contractor" is a company which must be designated by each first-tier subcontractor which does not hold prime contracts. The Predominant Interest Prime Contractor for any such first-tier subcontractor is the prime contractor with which the first-tier subcontractor, as a company as a whole, has the largest aggregate value of subcontracts or purchase orders for the performance of work under Government contracts or Federally assisted construction contracts.

m. "Major activity" means the major product or group of products produced or handled, or services rendered by the reporting unit (e.g., manufacturing airplane parts, retail sales of office furniture) in terms of the activity at which the greatest number of all employees work.

n. "Standard commercial supplies" means an article (1) which in the normal course of business is customarily maintained in stock by a manufacturer or any dealer, distributor, or other commercial dealer for the marketing of such article; or (2) which is manufactured and sold by two or more persons for general commercial or industrial use or which is manufactured and sold by two or more persons for general commercial or industrial use or which is identical in every material respect with an article so manufactured and sold.

(Continued on inside back cover)

(d) Page 2 of Instructions, Standard Form 40 and 40–A.

3. How To Prepare Compliance Reports (Standard Form 40)

The compliance reporting system has been developed to provide information of employment patterns and policies within detailed geographical areas and industry groups, as well as within a particular company. Since wide variations in industry needs, available manpower and labor markets may occur from one area to another, reports by an establishment or local basis provide the only practical means of obtaining this information. For purposes of facilitating preparation of reports, the Committee has made special provisions for the combination of certain small establishments into consolidated reports.

a. "Reporting Unit" (see also paragraph 2.*b.* of these instructions) means a single establishment of the company, except to the extent indicated below. Reports should be prepared by reporting units as follows:

(1) The principal office of the company shall always be reported as a separate reporting unit regardless of the number of employees and major activity involved.

(2) Any establishment (manufacturing, service, etc.) with 50 or more employees shall be reported as a separate reporting unit. Establishments having less than 50 employees must be reported either by individual establishment or by company entity within the same State. However, where there are retail or sales employees, they may be reported as set forth in subparagraphs (3) and (4) below.

(3) All retail employees within a single State may be reported either in one consolidated unit or by individual establishments.

(NOTE.—Retail employees are those who engage in selling merchandise for personal, household, or farm consumption, or render services incidental to the sale of the goods.)

(4) All sales employees, except those assigned to manufacturing establishments and except those reported in accordance with subparagraph (3) above, may be reported either:
(a) By individual establishments, or
(b) As a consolidated sales unit, or
(c) In the same unit as the employees of the principal office of the company.

(NOTE.—For description of sales employees, see paragraph 8 of these instructions.)

(5) The name of each establishment, its location and the number of employees, should be listed and attached to the report whenever a reporting unit consists of more than one establishment.

(6) In all cases where the reporting unit consists of more than one establishment, the Committee or the contracting or administering agency may, at any time, request that such information be reported on an establishment basis.

(7) If a company is engaged in activities for which the above-described reporting unit criteria may not be readily adaptable (e.g., operation of interstate railroads), special reporting procedures may be required. In such cases, the company should so advise the Committee by submitting, for the approval of the Executive Vice Chairman, a specific proposal for an alternative reporting system prior to the date on which the reports are due.

b. Employees To Be Reported.—Each report must include ALL employees in that reporting unit (regardless of how many employees in any particular establishment may be performing work directly for Government contracts or Federally assisted construction contracts) employed during the payroll period ending nearest the 15th of the month preceding that in which this report is due (e.g., nearest the 15th of February for reports due March 31).

c. Minority Groups.—Part III provides for reporting American Indians, Orientals and Spanish Americans where any of these groups is sufficiently large to constitute an identifiable factor in the local labor market. For purposes of this report, the term Spanish Americans means those of Latin American, Mexican, Puerto Rican or Spanish origin, and it is to be noted that the following States are among those having large concentrations of Spanish Americans: Arizona, California, Colorado, Florida, New Jersey, New Mexico, New York, and Texas.

(NOTE.—In completing Part III, do not leave any blank spaces. If none of these minority groups is employed, indicate "0" or write "none" in the appropriate total line or make such statement to that effect in Item 24, "Remarks," of the Compliance Report form.

(Antidiscrimination laws of a number of States and localities prohibit an employer from eliciting preemployment information regarding the race, creed, color, or national origin of an applicant or employee. However, enforcement authorities in all such States and localities have advised this Committee that their laws do not preclude employers from gathering such information subsequent to employment for the purpose of Government surveys.)

d. Items To Be Completed.—Each item of the compliance report shall be completed unless otherwise instructed. If an item does not apply, mark "N/A" for Not Applicable.

e. Reports To Be Signed.—Each Compliance Report (Standard Form 40) and Certificate of Submission of Current Compliance Report (Standard Form 40–A) shall be signed by an authorized representative of the company.

4. When and Where To File Compliance Reports

a. Any employer who becomes subject to these reporting requirements shall file an initial compliance report for each reporting unit of the company within 30 days after the first award of a prime contract or 60 days after the first award of a first-tier subcontract. Thereafter, annual reports shall be due on March 31 of each year in accordance with paragraph 4.*b.* below of these instructions, but if a company has filed initial compliance reports for each reporting unit of the company within 90 days immediately preceding March 31, it will not be necessary for the company to file annual reports for that year.

b. Annual compliance reports for each reporting unit of the company shall be filed by all prime contractors and first-tier subcontractors and shall be due on March 31 of each year so long as the prime contractor or the first-tier subcontractor remains subject to the reporting requirements.

c. The completed Form 40 report prepared in *triplicate* and including *all* the company's reporting units, shall be forwarded in one mailing to the President's Committee on Equal Employment Opportunity, Survey Division—Compliance Reports, Washington, D.C., 20210. (Copies of the reports will be furnished to the Predominant Interest Agency by the Committee.)

d. The prime contractor and the first-tier subcontractor should be prepared to furnish additional compliance reports to the Committee or a contracting or administering agency at times other than those prescribed above.

5. Certificate of Submission of Current Compliance Report (Standard Form 40–A)

This Certificate is to be filed upon request after the company has forwarded its completed Form 40 report in accordance with paragraph 4.*c.* of these instructions, or its EEO–10 report in the case of "Plans for Progress" employers. Prime contractors, if requested, shall file copies of this Certificate with the contracting officer or administering officer, as the case may be, of each contracting or administering agency with which it holds contracts or has Federally assisted construction contracts subject to these reporting requirements. First-tier subcontractors shall file copies of this Certificate, if requested, with each prime contractor with which it holds first-tier subcontracts subject to these reporting requirements.

(NOTE.—This Certificate is *not* to be filed with the Committee. Its purpose is to certify to the contracting or administering agency or to the prime contractor, as the case may be, that the company has filed the required compliance reports with the Committee.)

6. Responsibilities of Prime Contractors

a. Prime contractors having one or more contracts subject to these reporting requirements shall obtain all necessary supplies of report forms and instructions from their contracting or administering agencies. Standard Form 40 and Standard Form 40–A may be reproduced by contractors and subcontractors as long as the text and size of the form are not changed in the reproduction.

b. At the time of an award of a first-tier subcontract subject to these reporting requirements, the prime contractor shall inform the subcontractor of its responsibility to submit compliance reports in accordance with these instructions. If the subcontractor has not submitted a current compliance report, the prime contractor shall complete the items at the top of the compliance report (the date by which the report is to be submitted, the name and address of the prime contractor and the Predominant Interest Agency of the prime contractor) or otherwise furnish this information when transmitting report forms and instructions to its first-tier subcontractors.

c. A prime contractor who has been designated as a "Predominant Interest Prime Contractor" by a first-tier subcontractor on Standard Form 40–A (Certificate of Submission of Current Compliance Report) shall also insure that such subcontractor is reminded to file annual compliance reports due on March 31 and furnish a supply of forms for this purpose.

d. If the prime contractor fails to receive notification of the submission of current compliance reports as may have been requested from any subcontractor subject to these reporting requirements within 60 days after the award of the subcontract (or by March 31 of any year in the event of continuing contractual relationships with such subcontractor), this shall be reported immediately to the contracting officer of the Predominant Interest Agency and to the Committee with a statement as to the efforts made to obtain this information and the results.

7. Inquiries

Inquiries in connection with compliance reports and requests for supplies of compliance report forms shall be addressed to the appro-

UNOFFICIAL COPY

(e) Page 3 of Instructions, Standard Form 40 and 40–A.

priate contracting or administering officer identified on the forms furnished by the contracting or administering agency. Inquiries may also be addressed to the President's Committee on Equal Employment Opportunity, Survey Division—Compliance Reports, Washington, D.C., 20210.

B. Descriptions of Occupational Categories

To be used with Part III (Item 20).

OFFICIALS AND MANAGERS.—Occupations requiring administrative personnel who set broad policies, exercise over-all responsibility for execution of these policies, and direct individual departments or special phases of a firm's operations. Includes: officials, executives, middle management, plant managers, department managers and superintendents, purchasing agents and buyers, and kindred workers.

PROFESSIONAL.—Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, airplane pilots and navigators, architects, artists, chemists, designers, dietitians, editors, engineers, lawyers, librarians, mathematicians, natural scientists, personnel and labor relations workers, physical scientists, physicians, social scientists, teachers, and kindred workers.

TECHNICIANS.—Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about two years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: draftsmen, engineering aids, junior engineers, mathematical aides, nurses, photographers, radio operators, scientific assistants, surveyors, technical illustrators, technicians (medical, dental, electronic, physical sciences), and kindred workers.

SALES.—Occupations engaging wholly or primarily in direct selling. Includes: advertising agents and salesmen, insurance agents and brokers, real estate agents and brokers, stock and bond salesmen, demonstrators, salesmen and sales clerks, and kindred workers.

OFFICE AND CLERICAL.—Includes all clerical-type work regardless of level of difficulty, where the activities are predominantly nonmanual, though some manual work not directly involved with altering or transporting the products is included. Includes: bookkeepers, cashiers, collectors (bills and accounts), messengers and office boys, office machine operators, shipping and receiving clerks, stenographers, typists and secretaries, telegraph and telephone operators, and kindred workers.

CRAFTSMEN (SKILLED).—Manual workers of relatively high skill level having a thorough and comprehensive knowledge of the processes involved in their work. Exercise considerable independent judgment and usually receive an extensive period of training. Includes: the building trades, foremen, mechanics and repairmen, skilled machining occupations, compositors and typesetters, electricians, engravers, job setters (metal), motion picture projectionists, pattern and model makers, stationary engineers, tailors and tailoresses, and kindred workers.

OPERATIVES (SEMI-SKILLED).—Workers who operate machine or processing equipment or perform other factory-type duties of intermediate skill level which can be mastered in a few weeks and require only limited training. Includes: apprentices (auto mechanics, bricklayers, carpenters, electricians, machinists, mechanics, plumbers, building trades, metal working trades, printing trades, etc.), attendants (auto service and parking), blasters, chauffeurs, deliverymen and routemen, dressmakers and seamstresses (except factory), dyers, furnacemen, heaters (metal), laundry and dry cleaning operatives, milliners, mine operatives and laborers, motormen, oilers and greasers (except auto), painters (except construction and maintenance), photographic process workers, stationary firemen, truck and tractor drivers, weavers (textile), welders and flame-cutters, and kindred workers.

LABORERS (UNSKILLED).—Workers in manual occupations which generally require no special training. Perform elementary duties that may be learned in a few days and require the application of little or no independent judgment. Includes: garage laborers, car washers and greasers, gardeners (except farm) and groundskeepers, longshoremen and stevedores, lumbermen, raftsmen and wood choppers, laborers performing lifting, digging, mixing, loading, and pulling operations, and kindred workers.

SERVICE WORKERS.—Workers in both protective and nonprotective service occupations. Includes: attendants (hospital and other institutions, professional and personal service), barbers, charwomen and cleaners, cooks (except household), counter and fountain workers, elevator operators, firemen and fire protection, guards, watchmen and doorkeepers, stewards, janitors, policemen and detectives, porters, waiters and waitresses, and kindred workers.

APPRENTICES.—Persons employed in a bona fide apprenticeship program registered with a State Apprenticeship Council which is recognized by the Federal Committee on Apprenticeship, United States Department of Labor, or if no such recognized Council exists in a State, in a program registered with the Bureau of Apprenticeship, United States Department of Labor.

ON-THE-JOB TRAINEES:

White collar (includes persons engaged in formal training for official, managerial, professional, technical, sales, office and clerical occupations).

Production (includes persons engaged in formal training for craftsmen—when not trained under apprentice programs—operative, laborer and service occupations).

§ 1–16.901–40A Standard Form 40–A: Certificate of Submission of Current Compliance Report (Nondiscrimination Provisions of U.S. Government Contracts).

Standard Form 40–A
February 1964
President's Committee on Equal Employment Opportunity
41 CFR CH. 60 40–202

CERTIFICATE OF SUBMISSION OF CURRENT COMPLIANCE REPORT
Nondiscrimination Provisions of U.S. Government Contracts

IMPORTANT. THIS CERTIFICATE DOES NOT CONSTITUTE A COMPLIANCE REPORT. This form is to be used only for certifying that the company has submitted completed compliance reports for all its reporting units to the President's Committee. Upon submission of the reports *(SF–40 or EEO–10)*, the authorized representative of the company shall complete and sign this certificate. One certificate covers all reporting units. Read the instructions attached to SF–40 *(revised)* before completing. See paragraph 5 of the instructions thereon for distribution of this certificate.

1. NAME OF COMPANY

2. ADDRESS OF PRINCIPAL OFFICE | 3. EMPLOYER IDENTIFICATION NO. | 4. NO. OF REPORTING UNITS

5a. PREDOMINANT INTEREST AGENCY FOR COMPANY | 5b. PREDOMINANT INTEREST PRIME CONTRACTOR *(To be completed only by subcontractors who have no prime contracts.)*

6. DATE LAST COMPLETE SET OF REPORTS SUBMITTED

7. THIS CERTIFIES THAT CURRENT REPORTS *(SF–40, or in the case of "Plans for Progress" participants, Form EEO–10)* HAVE BEEN SUBMITTED TO THE COMMITTEE FOR EACH REPORTING UNIT OF THE COMPANY.

a. SIGNATURE OF AUTHORIZED REPRESENTATIVE | b. TITLE

c. ADDRESS | d. DATE

NOTE: Willfully false statements on this Certificate are punishable by law *(U.S. Code, Title 18, Section 1001)*.

SPECIMEN

§ 1-16.901-41 Standard Form 41: Compliance Report—Construction (Nondiscrimination Provisions of U.S. Government Contracts).

(a) Face of Part I of Standard Form 41.

STANDARD FORM 41
(PART I)
January 1963
PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY
41 CFR CH. 60 41-102

COMPLIANCE REPORT —CONSTRUCTION
(Construction, Alteration and Repair Contracts)
NONDISCRIMINATION PROVISIONS OF U.S. GOVERNMENT CONTRACTS

IMPORTANT. — Please read the accompanying instruction sheet which tells you how to prepare and when to submit each part of this report.

SUBMIT REPORT IN TRIPLICATE TO ▶ CONTRACTING AGENCY ADDRESS

Part I. — COMPANY-WIDE POLICIES AND EMPLOYMENT DATA

Section A. — CONTRACTOR AND PROJECT IDENTIFICATION

1. CONTRACTOR'S REPORTING STATUS *(Check one block only to indicate your status for the project covered by this report)* ☐ a. PRIME CONTRACTOR ☐ b. SUBCONTRACTOR

CROSS REFERENCE IDENTIFICATION	EMPLOYER IDENTIFICATION NO.	CODE (Leave blank)
2. NAME AND ADDRESS OF CONTRACTOR SUBMITTING THIS REPORT		
3. NAME AND ADDRESS OF PRINCIPAL OFFICE OF THE COMPANY		
4. NAME AND ADDRESS OF PARENT COMPANY IF AN AFFILIATED COMPANY		

5. PROJECT NAME, LOCATION, AND CONTRACT NO.

6. PRIME CONTRACTOR'S NAME AND ADDRESS *(Complete only when block 1b above is checked)*

SPECIMEN

Section B. — PREVIOUS COMPLIANCE REPORT CROSS REFERENCE (See Instructions 4a and 4d)

7. Have you filed a completed Part I of this report in connection with any other contract or subcontract during the current reporting period? ☐ YES ☐ NO

7a. If "Yes," give the following and then complete only Item 18 on reverse.

(1) NAME AND ADDRESS OF CONTRACTING AGENCY WITH WHOM FILED	(2) PROJECT NAME AND LOCATION	
	(3) CONTRACT NO.	(4) DATE FILED

7b. If "No," complete the balance of Part I.

Section C. — COMPANY EMPLOYMENT POLICY	YES	NO
8. Have you established a company-wide employment policy to assure that equal employment opportunity is given to all persons without regard to race, creed, color, or national origin?		
9. Have you communicated such policy in writing to all departments, offices, and facilities? *(If communicated by other means, explain.)*		
10. Have you assigned responsibility and put into effect procedures to assure that company-wide employment policy is understood and implemented by managerial, administrative, and supervisory personnel?		
11. If you sponsor or finance educational or training programs for the benefit of any employees, or prospective employees, are all such persons given the opportunity to participate without regard to race, creed, color, or national origin?		

SF 41-PART I

(Continue on reverse)

(b) Reverse of Part I of Standard Form 41.

Section D. — RECRUITMENT AND ADVERTISEMENT	YES	NO
12. Have all of the company's recruitment sources (other than unions) been notified that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin?		
12a. Has this been done in writing?		
13. Has each such recruitment source advised the company that it will refer all qualified applicants for employment to the company without regard to race, creed, color, or national origin?		
14. If the company recruits employees through advertising, does such advertising make clear that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin?		

Section E. — COMPANY EMPLOYMENT DATA SUMMARY

This section pertains ONLY to employment at the employer's principal office and branch establishments and employment data furnished should include ALL employees at such office and establishments.

15. EMPLOYMENT BY WORK CLASSIFICATIONS, RACE, AND SEX
(For pay period nearest 15th of month preceding that in which this report is due.)

WORK CLASSIFICATIONS (See Instruction 3)	TOTAL ALL EMPLOYEES	MALE EMPLOYEES				FEMALE EMPLOYEES			
		TOTAL MALES	MINORITY GROUPS (See Inst. 7)			TOTAL FEMALES	MINORITY GROUPS (See Inst. 7)		
			NEGRO	OTHER ____	OTHER ____		NEGRO	OTHER ____	OTHER ____
OFFICIALS AND MANAGERS									
PROFESSIONAL									
TECHNICAL									
OFFICE AND CLERICAL									
SALES WORKERS									
JOURNEYMEN AND MECHANICS									
APPRENTICES									
LABORERS									
SERVICE WORKERS									
TOTALS									

16. EMPLOYMENT STATISTICS WERE OBTAINED FROM WHICH SOURCE: ☐ RECORDS (If available) ☐ VISUAL CHECK ☐ OTHER (Specify) _____

17. REMARKS

18. DATE	SIGNATURE AND TITLE	ADDRESS

(Willfully false statements on this Report are punishable by law (U.S. Code, Title 18, Section 1001))

SPECIMEN

(c) Face of Part II of Standard Form 41.

STANDARD FORM 41
(PART II)
January 1963
PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY
41 CFR CH. 60 41-202

COMPLIANCE REPORT—CONSTRUCTION
(Construction, Alteration and Repair Contracts)
NONDISCRIMINATION PROVISIONS OF U.S. GOVERNMENT CONTRACTS

IMPORTANT.—Please read the accompanying instruction sheet which tells you how to prepare and when to submit each part of this report.

SUBMIT REPORT IN TRIPLICATE TO ▶ CONTRACTING AGENCY ADDRESS

Part II.—EMPLOYMENT CONDITIONS AT THE PROJECT SITE

Section A.—CONTRACTOR AND PROJECT IDENTIFICATION

1. CONTRACTOR'S REPORTING STATUS (Check one block only to indicate your status for the project covered by this report) ☐ a. PRIME CONTRACTOR ☐ b. SUBCONTRACTOR

CROSS REFERENCE IDENTIFICATION	EMPLOYER IDENTIFICATION NO.	CODE (Leave blank)
2. NAME AND ADDRESS OF CONTRACTOR SUBMITTING THIS REPORT		

3. PROJECT NAME, LOCATION, AND CONTRACT NO.

4. PRIME CONTRACTOR'S NAME AND ADDRESS (Complete only when block 1b above is checked)

SPECIMEN

Section B.—ORGANIZATIONS OF WORKERS	YES	NO
5. Has a collective bargaining agreement or other contract or understanding been made with a labor union (or unions) which covers the performance of any work on this project?		
6. Has the notice (Standard Form 38) advising the union of the company's obligations under the nondiscrimination provisions of Government contracts been sent to each such union by you or your trade representative?		
7. Has each such union notified you or your trade representative that its policies and practices are consistent with the nondiscrimination provisions?		
8. If "No," identify such union(s) and describe efforts made to obtain such information.		
9. Are any workers for the project covered by this report being recruited through union locals?		
10. If "Yes," identify such unions and indicate those unions with which you have collective bargaining agreements or other understandings involving the use of hiring halls.		

Section C.—APPRENTICESHIP TRAINING	YES	NO
11. Do you employ or intend to employ apprentices on this project?		
12. If "Yes," are applicants for such employment employed without regard to race, creed, color, or national origin?		
13. Is your apprenticeship program registered with a State Apprenticeship Agency or the Bureau of Apprenticeship and Training, U.S. Department of Labor?		
14. Does your apprenticeship program contain an equal employment opportunity provision?		

Section D.—RECRUITMENT SOURCES	U.S. EMPL. SERV.	STATE EMPL. SERV.	DIRECT HIRING	UNION	OTHER
15. CHECK PRINCIPAL SOURCES FOR: a. CONSTRUCTION WORKERS					
b. OTHER WORKERS					

Section E.—SUBCONTRACTS	YES	NO
16. Have you awarded any subcontracts for work covered by your contract or subcontract for this project?		
17. Has the nondiscrimination clause been included in all of your subcontracts subject to Executive Order 10925?		
18. Have all such subcontractors covered by these reporting requirements been instructed to file compliance reports and been furnished with report forms and instructions?		

SF 41—PART II

(Continue on reverse)

(d) Reverse of Part II of Standard Form 41.

Section F.—GENERAL

19. (Optional.) Describe briefly any actions other than those referred to in this report that have been taken which affect this project to assure that equal employment opportunity is given to all employees and applicants for employment without regard to race, creed, color, or national origin. Use this page if additional space is needed to fully answer the foregoing questions.

SPECIMEN

20. DATE	SIGNATURE AND TITLE	ADDRESS

Willfully false statements on this Report are punishable by law (U.S. Code, Title 18, Section 1001)

(e) Face of Part III of Standard Form 41.

STANDARD FORM 41 (PART III) January 1963 PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY 41 CFR CH. 60 — 41-301

COMPLIANCE REPORT—CONSTRUCTION

(Construction, Alteration and Repair Contracts)

NONDISCRIMINATION PROVISIONS OF U.S. GOVERNMENT CONTRACTS

IMPORTANT.—Please read the accompanying instruction sheet which tells you how to prepare and when to submit each part of this report.

SUBMIT REPORT IN DUPLICATE TO ▶ CONTRACTING AGENCY — ADDRESS

Part III.—EMPLOYMENT DATA SUMMARY AT THE PROJECT SITE

Section A.—CONTRACTOR AND PROJECT IDENTIFICATION

1. CONTRACTOR'S REPORTING STATUS (*Check one block only to indicate your status for the project covered by this report.*) ☐ a. PRIME CONTRACTOR ☐ b. SUBCONTRACTOR

CROSS REFERENCE IDENTIFICATION	EMPLOYER IDENTIFICATION NO.	CODE (Leave blank)
2. NAME AND ADDRESS OF CONTRACTOR SUBMITTING THIS REPORT		

3. PROJECT NAME, LOCATION, AND CONTRACT NO.	4. CONSTRUCTION DATES (Estimated or Actual) a. STARTING	b. COMPLETION

5. PRIME CONTRACTOR'S NAME AND ADDRESS (*Complete only when block 1b above is checked*)

6. CONTRACTOR'S SCOPE OF WORK (*Major activity*) UNDER CONTRACT AT THIS PROJECT — CODE (Leave blank)

SPECIMEN

Section B.—CURRENT EMPLOYMENT AT THE PROJECT SITE

7. BY RACE AND WORK CLASSIFICATIONS		TOTAL EMPLOYEES	MINORITY GROUPS (See Instruction 7) TOTAL NEGRO	TOTAL OTHER ____	TOTAL OTHER ____	CODE (Leave blank)
OTHER EMPLOYEES (See Instructions 2b & 3)	SUPERVISORS					
	PROFESSIONAL					
	TECHNICAL					
	OFFICE AND CLERICAL					
	SERVICE WORKERS					
CONSTRUCTION WORKERS (See Instruction 2a)	FOREMEN*					
	JOURNEYMEN AND MECHANICS*					
	HELPERS*					
	APPRENTICES*					
	LABORERS					
GRAND TOTALS						

*If more than one trade is employed, separately tabulate each trade in item 8 on the reverse.

SF 41—PART III (Continue on reverse)

(f) Reverse of Part III of Standard Form 41.

8. CONSTRUCTION WORKERS BY RACE AND TRADE (*Excluding Laborers*)

WORK CLASSIFICATIONS (Tabulate each trade separately and specify the applicable trade in each case) TRADE	LEVEL	TOTAL EMPLOYEES	MINORITY GROUPS (See Inst. 7) TOTAL NEGRO	TOTAL OTHER ____	TOTAL OTHER ____	CODE (Leave blank)
a.	FOREMEN					
	JOURNEYMEN & MECHANICS					
	HELPERS					
	APPRENTICES					
b.	FOREMEN					
	JOURNEYMEN & MECHANICS					
	HELPERS					
	APPRENTICES					
c.	FOREMEN					
	JOURNEYMEN & MECHANICS					
	HELPERS					
	APPRENTICES					
d.	FOREMEN					
	JOURNEYMEN & MECHANICS					
	HELPERS					
	APPRENTICES					
e.	FOREMEN					
	JOURNEYMEN & MECHANICS					
	HELPERS					
	APPRENTICES					
f.	FOREMEN					
	JOURNEYMEN & MECHANICS					
	HELPERS					
	APPRENTICES					
g.	FOREMEN					
	JOURNEYMEN & MECHANICS					
	HELPERS					
	APPRENTICES					
h.	FOREMEN					
	JOURNEYMEN & MECHANICS					
	HELPERS					
	APPRENTICES					
i.	FOREMEN					
	JOURNEYMEN & MECHANICS					
	HELPERS					
	APPRENTICES					
j.	FOREMEN					
	JOURNEYMEN & MECHANICS					
	HELPERS					
	APPRENTICES					

SPECIMEN

9. DOES THE EMPLOYMENT REPORTED ABOVE REPRESENT PEAK EMPLOYMENT? ☐ YES ☐ NO

10. IF "NO," GIVE THE ACTUAL DATE PEAK EMPLOYMENT WAS REACHED OR THE ESTIMATED DATE PEAK EMPLOYMENT WILL BE REACHED. a. ACT. DATE b. EST. DATE

11. MINORITY GROUP EMPLOYMENT STATISTICS WERE OBTAINED FROM WHICH SOURCE: ☐ RECORDS (*If available*) ☐ VISUAL CHECK ☐ OTHER (*Specify*) _____

12. GIVE CLOSING DATE OF PAYROLL PERIOD ENDING NEAREST THE 15TH OF THE MONTH IN WHICH THIS REPORT IS DUE _____ 19____

13. REMARKS

14. DATE	SIGNATURE AND TITLE	ADDRESS

(Willfully false statements on this Report are punishable by law (U.S. Code, Title 18, Section 1001))

(g) Face of Instructions, Standard Form 41.

INSTRUCTIONS
STANDARD FORM 41
JANUARY 1963
PRESIDENT'S COMMITTEE ON EQUAL
EMPLOYMENT OPPORTUNITY
41 CFR CH. 60

COMPLIANCE REPORT—CONSTRUCTION

(Construction, Alteration and Repair Contracts)

Nondiscrimination Provisions of U.S. Government Contracts

INSTRUCTIONS

1. General

(a) The attached Standard Form 41 (Compliance Report—Construction) has been issued by the President's Committee on Equal Employment Opportunity for use by employers who have Government contracts or subcontracts for construction, repair and/or alteration in connection with which they perform construction work at the site of construction. Any prime contractor having such a contract for $100,000 or more, and any subcontractor having such a subcontract for $50,000 or more shall file this form in accordance with these instructions. Employers having contracts, subcontracts or purchase orders for construction, repair and/or alteration, or for materials to be used therein, but who themselves perform no construction work at the site of construction, shall not file the attached form, but shall submit Compliance Reports on Standard Form 40 in accordance with instructions attached thereto.[1] It is the obligation of contractors and subcontractors subject to Executive Order 10925 to cause and require all other subcontractors and suppliers subject to the reporting requirements of this Standard Form 41 or of Standard Form 40, and performing construction work at the site of construction, or furnishing materials therefor, to file the appropriate Compliance Report form.

(b) The filing of the Plans for Progress reports (Budget Bureau No. 44-R1174) by contractors or subcontractors affiliated with the Committee's Plans for Progress program will be accepted as a compliance report in lieu of the attached form. However, this alternative does not relieve such contractors or subcontractors of the obligation of causing their subcontractors and suppliers not participating in the Plans for Progress program to file the appropriate Compliance Report form.

(c) Compliance Reports are not required for work performed outside the United States where no recruitment of workers within the limits of the United States is involved. (As used herein, "United States" includes the Commonwealth of Puerto Rico, the Panama Canal Zone, and the possessions of the United States.)

2. Definitions

(a) "Order" means Executive Order 10925, issued on March 6, 1961.

(b) "Committee" means the President's Committee on Equal Employment Opportunity established under the provisions of Executive Order 10925.

(c) "Prime contractor" means any contractor holding a contract with the Government.

(d) "Subcontractor" means any contractor holding a contract with a Government prime contractor or with another subcontractor calling for services or supplies required for the performance of a Government prime contract.

(e) "Site of construction" refers to the physical location of a project covered by a contract or subcontract for construction, repair and/or alteration and to temporary locations or facilities established specifically to meet the demands of such contract or subcontract.

(f) "Contracting agency" means any department, agency or establishment in the executive branch of the Government, including any wholly owned Government corporation, which enters into contracts.

(g) "Construction workers" include working foremen, journeymen, mechanics, apprentices, helpers and laborers engaged in new work, alteration, demolition and repair, including painting at the site of construction, and performing jobs ordinarily performed by members of the construction trades. The term includes all such workers, regardless of their degree of skill, engaged in contract construction activities.

(h) "Other employees," as used in these instructions, means all other persons engaged in performing work at the site of construction, including, but not limited to, the following activities: executive, purchasing, accounting, personnel, watchman and guard activities, and professional and technical activities, routine office functions and supervisory foremen.

(i) "Principal office of the company" means the central administrative office of the legal entity (corporation, partnership or single proprietorship) regardless of affiliation, stock ownership or control.

(j) "Employer identification number" is a 9-digit number which each legal entity is assigned by the Internal Revenue Service. It is used on all quarterly payroll tax withholding reports for the Social Security Administration and the Internal Revenue Service.

(k) "Weekly payroll report" means those reports required to be filed with a contracting agency under 29 CFR, Part 5 in connection with contracts subject to the Davis-Bacon Act (40 U.S.C. 276a et seq.).

(l) "Construction trades" includes, but is not limited to, asbestos workers, boilermakers, bricklayers, stone cutters, carpenters, cement finishers, electrical workers, elevator constructors, equipment installation mechanics, glaziers, lathers, operating engineers, ornamental ironworkers, painters, plasterers, plumbers and pipefitters, reinforcing ironworkers, roofers, sheet metal workers, soft floor layers, structural ironworkers, terrazzo workers and tile setters.

3. Descriptions of Work Classifications

The following descriptions are applicable to the work classifications listed in Parts I and III of Standard Form 41:

(a) *Officials and Managers.*—Occupations requiring administrative personnel who set broad policies, exercise overall responsibility for execution of these policies, and direct individual departments or special phases of a firm's operations. Includes: officials, executives, plant managers, superintendents, purchasing agents and buyers, and kindred workers.

(b) *Supervisors.*—Includes project superintendents, project supervisors, general foremen and supervisory foremen.

(c) *Professional.*—Occupations requiring either college graduation or experience of such kind and amount as to provide a comparable background. Includes: accountants and auditors, architects, estimators, designers, engineers, lawyers, personnel and labor relations workers, physicians, and kindred workers.

(d) *Technical.*—Occupations requiring a combination of basic scientific knowledge and manual skill which can be obtained through about 2 years of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent on-the-job training. Includes: draftsmen, engineering aides, safety engineers, nurses, surveyors, technical illustrators, and kindred workers.

(e) *Sales Workers.*—Occupations engaging wholly or primarily in direct selling. Includes: advertising agents, salesmen, and kindred workers.

(f) *Office and Clerical.*—All clerical-type occupations regardless of level of difficulty. Includes: bookkeepers, cashiers, messengers and office boys, office machine operators, shipping and receiving clerks, payroll clerks, stenographers, typists and secretaries, telephone operators, and kindred workers.

(g) *Service Workers.*—Workers in both protective and nonprotective service occupations. Includes: firemen, guards, watchmen, janitors, and kindred workers.

[1] The instructions attached to Standard Form 40 state that each prime contractor and first-tier subcontractor, as defined therein, who is subject to Executive Order 10925, having a contract, subcontract or purchase order for $50,000 or more (or $100,000 or more if solely for standard commercial supplies and raw materials) and also having 50 or more employees, shall file that form in accordance with those instructions. Note that Standard Form 40 is to be filed with the President's Committee on Equal Employment Opportunity, while the attached Standard Form 41 is to be filed with the contracting agency.

(h) Reverse of Instructions, Standard Form 41.

4. When To File Reports

Each employer who has one or more contracts or subcontracts subject to these reporting requirements shall report separately to the contracting agency or agencies, at the times set forth below, for each contract awarded on or after January 1, 1963, and for each subcontract awarded pursuant to any such contract. Part I of Standard Form 41 pertains to employment at the employer's principal office and branch establishments[2] while Parts II and III pertain to employment at the site of construction.

(a) Each such employer shall make the initial filing of this report at the time the first weekly payroll report is submitted to the contracting agency after work has begun at the site of construction. In making such initial filing the employer may complete the entire Standard Form 41 or may, if it chooses, complete only Parts II and III. If the latter choice is exercised the employer must then complete the initial filing by submitting a completed Part I within thirty (30) days after the award of the contract or subcontract. However, if in connection with any other contract or subcontract, a completed Part I has been submitted to any contracting agency at any time within ninety (90) days prior to the preceding March 31 it will only be necessary to make appropriate entries in items 1 through 7(a) of Part I at the time of the filing of this report.

(b) After the initial filing of this report, Part III must thereafter be submitted on a quarterly basis as follows: on March 31, June 30, September 30 and December 31, up to and including the quarterly period during which peak employment is reached. However, if the initial filing has been made within 6 weeks of the end of one of the above reporting periods, Part III need not be submitted again until the end of the next subsequent reporting period. (For example, if the initial filing was made on February 25 of a given year, rather than filing Part III again on March 31, it would not be necessary to submit another Part III until June 30 of that year.)

(c) It will not be necessary to file Part III for any quarterly period subsequent to the period during which peak employment is reached, unless requested to do so by the Committee or the contracting agency.

(d) After the initial filing of this report, annual submissions of Part I shall be made by filing a completed Part I on or before March 31 of each year (beginning March 31, 1964) so long as the contractor or subcontractor remains subject to these reporting requirements. If subject to these reporting requirements under more than one contract or subcontract the employer shall submit a completed Part I on any March 31 only to that contracting agency issuing the prime contract for the current project under which the employer first became subject to these reporting requirements, and shall notify other contracting agencies of such submission by forwarding to them Part I with only items 1 through 7(a) completed. If a completed Part I has been submitted to a contracting agency within ninety (90) days preceding any March 31, in connection with this or any other contract or subcontract, it will not be necessary to file again on such March 31, but the employer shall notify other contracting agencies of such submission by forwarding to them Part I with only items 1 through 7(a) completed. In the event the employer is engaged in nonconstruction as well as construction activities, Part I shall cover only employment in the principal office and branch establishments of the employer's construction division. In such cases Compliance Reports for other divisions of the employer shall be submitted on Standard Form 40 if such divisions are subject to the reporting requirements for that form.

5. Additional Reports

The Committee or the contracting agency may require any contractor or subcontractor to submit the attached Standard Form 41, in whole or in part, at times other than those prescribed above. Whenever specifically requested, the contractor or subcontractor should be prepared to furnish an up-to-date report within a reasonable time.

6. How To Prepare Part III (Employment Data Summary)[3]

(a) The employment statistics called for in Part III shall cover all employees actually working at the site of construction as defined in paragraph 2(e) of these Instructions. The statistics furnished in each quarterly report shall include all those employed during the payroll period ending nearest the 15th of the month in which the report is due. However, if peak employment is reached during the quarter, the statistics furnished shall include all those employed during the payroll period in which peak employment was reached.

(b) Item 7 of Part III shall include all employees of the contractor or subcontractor who are within the categories described in paragraphs 2(g) and 2(h) of these Instructions.

(c) If the contractor or subcontractor directly employs workers of two or more construction trades, such as operating engineers, bricklayers, ironworkers, etc., a separate tabulation shall be made of the workers representing each trade in item 8 on the reverse of Part III. This requirement of a separate tabulation applies only to construction workers employed at the site of construction, with the exception of laborers.

7. Other Minority Groups

Item 15 of Part I and items 7 and 8 of Part III provide for the reporting of other specified minority groups in addition to Negroes, where any such minority group constitutes an identifiable factor in the local labor market. The only "other" minority groups for which such information is to be furnished are Orientals, Latin-Americans, Puerto Ricans and American Indians. When figures for two "other" minority groups are available, a separate column shall be used for each group and shall specify which group is given in each column.

8. How To File Reports

(a) Standard Form 41, or portions thereof, shall be submitted in duplicate to the contracting agency issuing the prime contract for the project in connection with which the prime contractor or subcontractor is subject to these reporting requirements.

(b) Each item of a report must be completed. If an item does not apply mark "N/A" for Not Applicable. Each report, or separate portions thereof, shall be signed by an authorized representative of the contractor or subcontractor.

9. Notifying the Contracting Agency of Subcontractors Working on the Project

Each prime contractor shall furnish to the contracting agency at the time of the award of the contract a list of all known subcontractors who will be subject to these reporting requirements, and shall continue to keep the contracting agency advised of any other subcontractors who may subsequently be awarded subcontracts subject to these reporting requirements.

10. Supply of Compliance Report Forms

A supply of Compliance Report forms will be furnished by the contracting agency to the prime contractor. The prime contractor shall see that distribution of appropriate forms is made to subcontractors and suppliers subject to the reporting requirements of either this Standard Form 41 or of Standard Form 40.

11. Inquiries

Inquiries in connection with Compliance Reports and requests for supplies of Compliance Report forms and instructions shall be addressed to the contracting officer identified on the forms furnished by the contracting agency. Inquiries may also be addressed to the President's Committee on Equal Employment Opportunity, Survey Division, Compliance Reports, Washington 25, D.C.

[2] If the employer is engaged in activities other than construction it shall file Part I only for those branch establishments engaged in the construction business.

[3] Antidiscrimination laws of several States and cities prohibit the eliciting of preemployment information regarding an applicant's race, creed, color or national origin. However, the Committee has been advised by the appropriate enforcement authorities in all such States and localities that such prohibitions do not extend to the gathering of information of this nature subsequent to employment for bona fide reasons such as Government surveys.

SPECIMEN SPECIMEN

§ 1–16.901–44 Standard Form 44: Purchase Order—Invoice—Voucher.

(a) Front and reverse of cover of Standard Form 44.

STANDARD FORM 44
(June 1964)

U.S. GOVERNMENT

PURCHASE ORDER—INVOICE—VOUCHER

Prescribed by Administrator of General Services
FPR 1-3.405-1

41-125

If lost, will finder please return to—

SPECIMEN

INSTRUCTIONS

(This form is for official Government use only)

1. Filling in the Form

(a) All copies of the form must be legible. To insure legibility, indelible pencil or ball-point pen should be used. SELLER'S NAME AND ADDRESS MUST BE PRINTED.

(b) Items ordered will be individually listed. General descriptions such as "hardware" are not acceptable. Show discount terms.

(c) Enter project reference or other identifying description in space captioned "PURPOSE." Also, enter proper accounting information, if known.

2. Distributing Copies

Copy No. 1—Give to seller. It is for his use as the invoice or as an attachment to his commercial invoice.

Copy No. 2—Give to seller for his record of the order.

Copy No. 3—

(1) On over-the-counter transactions where delivery has been made, complete receiving report section and forward this copy to the proper administrative office.

(2) On other than completed over-the-counter transactions, forward this copy to location specified for delivery. (Upon delivery, receiving report section is to be completed and this copy then forwarded to the proper administrative office.)

Copy No. 4—Retain in the book, unless otherwise instructed.

3. When Paying Cash at Time of Purchase

(a) Enter the amount of cash paid and obtain seller's signature in the space provided in the Seller section of Copy No. 1. If seller prefers to provide a commercial cash receipt, attach it to Copy No. 1 and check the "paid in cash" block at the bottom of the form.

(b) Distribution of copies when payment is by cash is the same as described above, except that Copy No. 1 is retained by Government representative when cash payment is made. Copy No. 1 is used thereafter in accordance with agency instructions pertaining to handling receipts for cash payment.

(b) Standard Form 44a: Seller's Invoice.

Standard Form 44a
JUNE 1964

U.S. GOVERNMENT
PURCHASE ORDER—INVOICE—VOUCHER

DATE OF ORDER | ORDER NO.

PRINT NAME AND ADDRESS OF SELLER (Number, Street, City, and State)

SELLER

FURNISH SUPPLIES OR SERVICES TO (Name and address)

SUPPLIES OR SERVICES	QUANTITY	UNIT PRICE	AMOUNT

AGENCY NAME AND BILLING ADDRESS

BUYER

TOTAL
DISCOUNT TERMS
%
DATE INVOICE RECEIVED

ORDERED BY (Signature and title)

PURPOSE AND ACCOUNTING DATA

PURCHASER—To sign below for over-the-counter delivery of items

RECEIVED BY

TITLE | DATE

SELLER—Please read instructions on Copy 2

☐ PAYMENT RECEIVED $ ☐ PAYMENT REQUESTED $

NO FURTHER INVOICE NEED BE SUBMITTED

SELLER | DATE

BY (Signature)

I certify that this account is correct and proper for payment in the amount of

$

(Authorized certifying officer)

DIFFERENCES

ACCOUNT VERIFIED: CORRECT FOR

BY

PAID BY ☐ CASH | DATE PAID | VOUCHER NO.

OR (Check No.)

1. SELLER'S INVOICE
(See instructions on Copy 2)

SPECIMEN

(c) Standard Form 44b: Seller's Copy of Order.

Standard Form 44b
JUNE 1964

U.S. GOVERNMENT
PURCHASE ORDER—INVOICE—VOUCHER

DATE OF ORDER | ORDER NO.

PRINT NAME AND ADDRESS OF SELLER (Number, Street, City, and State)

SELLER

FURNISH SUPPLIES OR SERVICES TO (Name and address)

SUPPLIES OR SERVICES	QUANTITY	UNIT PRICE	AMOUNT

AGENCY NAME AND BILLING ADDRESS

BUYER

TOTAL
DISCOUNT TERMS
% DATE
DATE INVOICE RECEIVED

ORDERED BY (Signature and title)

PURPOSE AND ACCOUNTING DATA

PURCHASER—To sign below for over-the-counter delivery of items

RECEIVED BY

TITLE | DATE

SELLER—Please read instructions on Copy 2

☐ PAYMENT RECEIVED $ ☐ PAYMENT REQUESTED $

NO FURTHER INVOICE NEED BE SUBMITTED

SELLER | DATE

BY (Signature)

INSTRUCTIONS TO SELLER

After satisfactory identification of the Government representative presenting this purchase order, verify the itemization, including quantity, unit price, amount, total and discount sections.

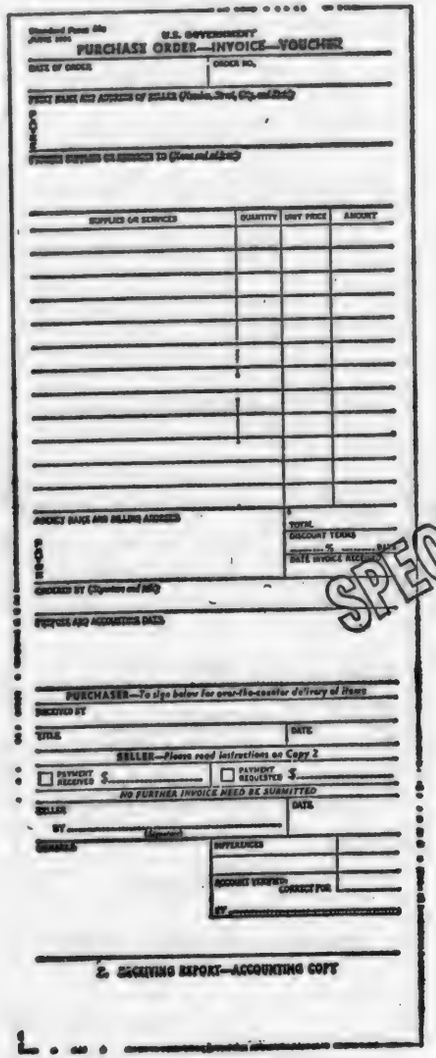
This form is so designed that Copy 1 may be used as a cash payment receipt or as your invoice by completing, as appropriate, either the Payment Received or Payment Request blocks and signing the Seller Section.

If you would rather submit your own invoice, DO NOT SIGN COPY 1, but attach it unsigned to your invoice to expedite verification and processing for payment.

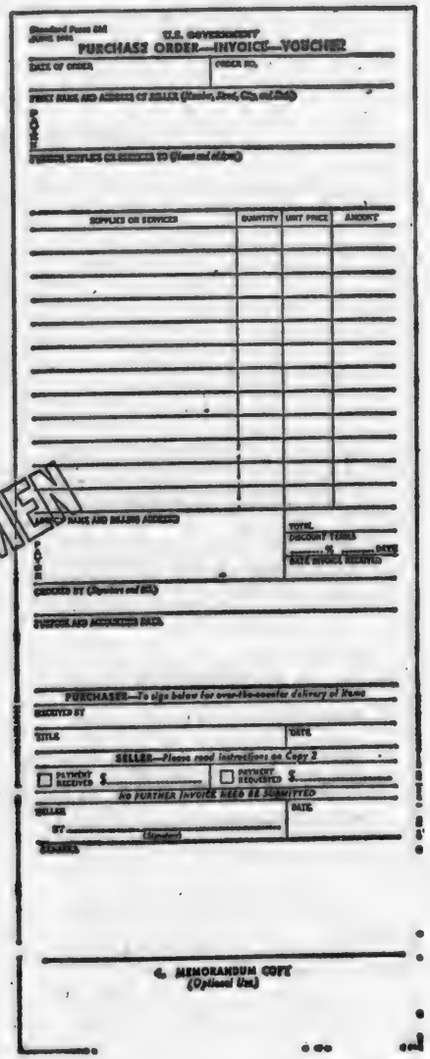
2. SELLER'S COPY OF ORDER

SPECIMEN

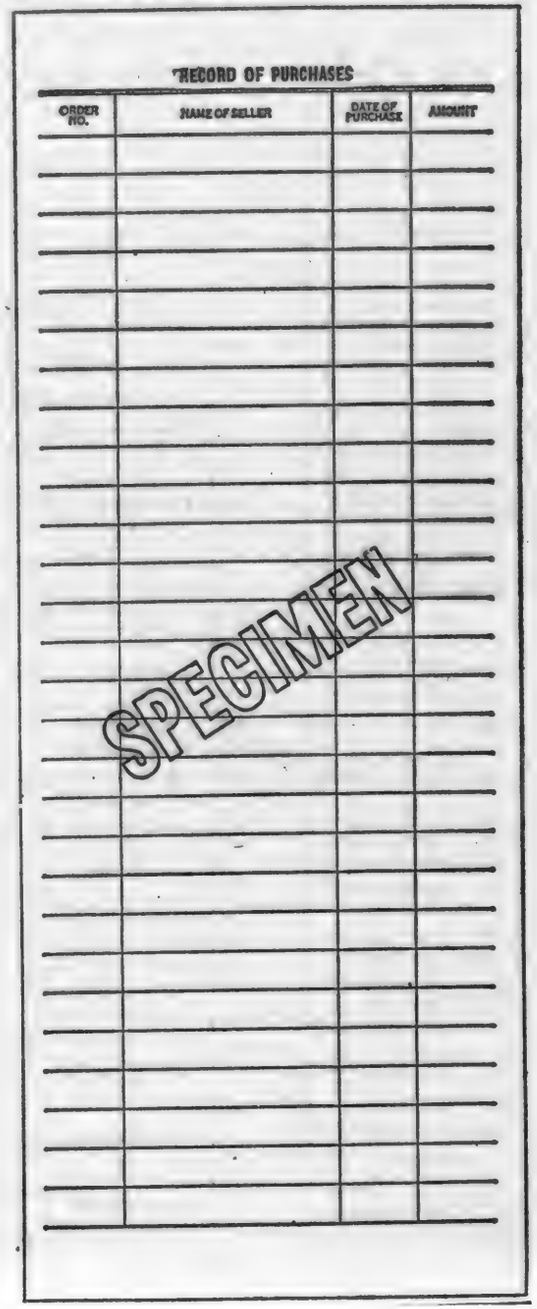
(d) Standard Form 44c: Receiving Report—Accounting Copy.



(e) Standard Form 44d: Memorandum Copy.



(f) Standard Form 44: Inside back cover.



§ 1–16.901–129 **Standard Form 129: Bidder's Mailing List Application.**

(a) Page 1 of Standard Form 129.

STANDARD FORM 129 - AUGUST 1952
GENERAL SERVICES ADMINISTRATION
FED. PROC. REG. (41 CFR) 1-16.802

BIDDER'S MAILING LIST APPLICATION

☐ INITIAL APPLICATION
☐ REVISION

All answers should be typed or printed. See reverse for information and instructions.

TO: | DATE OF THIS APPLICATION

1. NAME OF APPLICANT | 2. ADDRESS TO WHICH BIDDING FORMS ARE TO BE MAILED

3. ADDRESS OF MAIN BUSINESS OFFICE | 4. HOW LONG IN PRESENT BUSINESS

5. TYPE OF ORGANIZATION (*Check one*) ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION | 6. IF INCORPORATED, INDICATE IN WHICH STATE

7. NAMES OF OFFICERS, MEMBERS OR OWNERS OF CONCERN, PARTNERSHIP, ETC.

(A) PRESIDENT | (B) VICE PRESIDENT

(C) SECRETARY | (D) TREASURER

(E) OWNERS OR PARTNERS

8. AFFILIATED CONCERNS (*Name, location, and in detail, controlling interest in each*)

9. PERSONS OR CONCERNS AUTHORIZED TO SIGN BIDS AND CONTRACTS IN YOUR NAME (*If agent, so specify*)

NAME	OFFICIAL CAPACITY

10. PERSONS TO CONTACT ON MATTERS CONCERNING BIDS AND CONTRACTS (*If agent, so specify*)

NAME	OFFICIAL CAPACITY	TELEPHONE NO.

11. INDICATE CLASSES OF EQUIPMENT, SUPPLIES, MATERIAL, AND/OR SERVICES ON WHICH YOU DESIRE TO BID (*Use attached list, if any*)

12. CATEGORY (*See definitions on the reverse of this form and check below the category which applies to the applicant*)

☐ (A) MANUFACTURER OR PRODUCER ☐ (C) REGULAR DEALER (*Type 2*)
☐ (B) REGULAR DEALER (*Type 1*) ☐ (D) SERVICE ESTABLISHMENT

13. NUMBER OF PERSONS NOW EMPLOYED | 14. FLOOR SPACE (*Square feet*): MANUFACTURING, WAREHOUSE | 15. NET WORTH: DATE, AMOUNT

16. THIS SPACE FOR USE BY THE GOVERNMENT

17. I certify that the information supplied herein (*including all pages attached*) is correct and that neither the applicant nor any person (*or concern*) in any connection with the applicant as a principal or officer, so far as is known, is now debarred or otherwise declared ineligible by any agency of the Federal Government from bidding for furnishing materials, supplies or services to the Government or any agency thereof.

SIGNATURE OF PERSON AUTHORIZED TO SIGN THIS APPLICATION

18. NAME AND TITLE OF PERSON SIGNING (*Please type or print*)

SPECIMEN

(b) Page 2 of Standard Form 129.

INFORMATION AND INSTRUCTIONS

Persons or concerns wishing to be added to a particular agency's bidder's mailing list for supplies or services shall file this properly completed and certified Bidder's Mailing List Application, together with such other lists as may be attached to the application form, with each procurement office of the Federal agency with which they desire to do business. *The application shall be submitted and signed by the principal as distinguished from an agent, however constituted.*

After placement on the bidder's mailing list of an agency, a supplier's failure to respond (*submission of bid, or notice in writing that you are unable to bid on that particular transaction but wish to remain on the active bidder's mailing list for that particular item*) to Invitations for Bids will be understood by the agency to indicate lack of interest and concurrence in the removal of the supplier's name from the purchasing activity's bidder's mailing list for the items concerned.

CATEGORY DEFINITIONS
(*See Item No. 12*)

A. MANUFACTURER OR PRODUCER means a person (*or concern*) owning, operating, or maintaining a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment of the general character of those listed in item No. 11.

B. REGULAR DEALER (*Type 1*) means a person (*or concern*) who owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles, or equipment of the general character listed in item No. 11 are bought, kept in stock, and sold to the public in the usual course of business.

C. REGULAR DEALER (*Type 2*) in the case of supplies of particular kinds (*at present, petroleum, lumber and timber products, coal, machine tools, raw cotton, green coffee, or hay, grain, feed, and straw*) "REGULAR DEALER" means a person (*or concern*) satisfying the requirements of article 101 (b) of the regulations, as amended from time to time, prescribed by the Secretary of Labor under the Walsh-Healey Public Contracts Act (41 U. S. Code 35–45).

D. SERVICE ESTABLISHMENT means a concern (*or person*) which owns, operates, or maintains any type of business which is principally engaged in the furnishing of nonpersonal services, such as (*but not limited to*) repairing, cleaning, redecorating, or rental of personal property, including the furnishing of necessary repair parts or other supplies as part of the services performed.

SPECIMEN

§ 1-16.901-147 Standard Form 147: Order for Supplies or Services.

(a) Page 1 of Standard Form 147.

STANDARD FORM 147, JUNE 1964—FED. PROC. REG. (41 CFR) 1-3.600 — 147-104 — PAGE 1 OF ____

ORDER FOR SUPPLIES OR SERVICES

MARK ALL PACKAGES AND PAPERS WITH ORDER AND/OR CONTRACT NUMBERS

ISSUING OFFICE

DATE OF ORDER	CONTRACT NO. (If any)	ORDER NO.

ACCOUNTING AND APPROPRIATION DATA

REQUISITIONING OFFICE

REQUISITION NO./PURCHASE AUTHORITY

CONTRACTOR (Name and address)

TO→

SHIP TO (Consignee and address)

VIA

TYPE OF ORDER

PURCHASE ☐ — REFERENCE YOUR ____ SPECIFIED ON BOTH SIDES OF THIS ORDER AND ON THE ATTACHED SHEETS, IF ANY, INCLUDING DELIVERY AS INDICATED. THIS PURCHASE IS NEGOTIATED UNDER AUTHORITY OF ____ PLEASE FURNISH THE FOLLOWING ON THE TERMS

DELIVERY ☐ — EXCEPT FOR THE BILLING INSTRUCTIONS ON THE REVERSE, THIS DELIVERY ORDER IS SUBJECT TO INSTRUCTIONS CONTAINED ON THIS SIDE ONLY OF THIS FORM AND IS ISSUED SUBJECT TO THE TERMS AND CONDITIONS OF THE ABOVE-NUMBERED CONTRACT.

F.O.B. POINT	GOVERNMENT B/L NO	DELIVERY TO F.O.B. POINT ON OR BEFORE	DISCOUNT TERMS

SCHEDULE

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY ORDERED	UNIT	UNIT PRICE	AMOUNT	QUANTITY ACCEPTED

SPECIMEN

SIZE CLASSIFICATION (Check one) ☐ SMALL BUSINESS ☐ OTHER THAN SMALL BUSINESS

TOTAL FROM CONTINUATION PAGES

(See reverse for rejections)

SEE BILLING INSTRUCTIONS ON REVERSE

GRAND TOTAL→

SHIPPING POINT	GROSS SHIPPING WEIGHT	INVOICE NO.

MAIL INVOICE TO

UNITED STATES OF AMERICA

BY ____ (Signature)

NAME (Typed)

TITLE: CONTRACTING/ORDERING OFFICER

STANDARD FORM 147, JUNE 1964

(b) Page 2 of Standard Form 147.

TERMS AND CONDITIONS OF PURCHASE ORDER

1. INSPECTION AND ACCEPTANCE.—Inspection and acceptance will be at destination, unless otherwise provided. Until delivery and acceptance, and after any rejections, risk of loss will be on the Contractor unless loss results from negligence of the Government.

2. VARIATION IN QUANTITY.—No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.

3. DISCOUNTS.—Discount time will be computed from date of delivery at place of acceptance or from receipt of correct invoice at the office specified by the Government, whichever is later. Payment is made, for discount purposes, when check is mailed.

4. DISPUTES.—(a) Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting officer, who shall mail or otherwise furnish a copy thereof to the Contractor. This decision shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Contractor mails or otherwise furnishes to the Contracting officer a written appeal addressed to the Head of the Agency. The decision of the Head of the Agency or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. The Contractor shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the contract and in accordance with the Contracting officer's decision. (b) This "Disputes" clause does not preclude consideration of law questions in connection with decisions provided for in (a) above; provided, that nothing in this contract shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

5. FOREIGN SUPPLIES.—This contract is subject to the Buy American Act (41 U.S.C. 10 a-d) as implemented by Executive Order 10582 of December 17, 1954, and any restrictions in appropriation acts on the procurement of foreign supplies.

6. CONVICT LABOR.—The Contractor agrees not to employ for work under this contract any person undergoing sentence of imprisonment at hard labor.

7. OFFICIALS NOT TO BENEFIT.—No Member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

8. COVENANT AGAINST CONTINGENT FEES.—The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon any agreement or understanding for a commission, percentage, brokerage, or contingent fees, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

9. FEDERAL, STATE, AND LOCAL TAXES.—Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State, and local taxes and duties in effect on the date of this contract but does not include any taxes from which the Government, the Contractor or this transaction is exempt. Upon request of the Contractor, the Government shall furnish a tax exemption certificate or similar evidence of exemption with respect to any such tax not included in the contract price pursuant to this clause. For the purpose of this clause, the term "date of this contract" means the date of the contractor's quotation or, if no quotation, the date of this purchase order.

SPECIMEN

PAYMENTS AND BILLING INSTRUCTIONS

Invoices shall be submitted in the ORIGINAL only, unless otherwise specified, and shall contain the following information: contract number (if any), order number, item number(s), description of supplies or services, sizes, quantities, unit prices, and extended totals. Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading. If prepaid parcel post charges are billed, the gross weight and shipping point must be shown.

NOTE.—If desired, this order (or a copy thereof) may be used by the Contractor as his invoice, in lieu of a separate invoice, provided the following statement, (signed and dated) is entered on (or attached to) the order: "Payment is requested in the amount of $_____ No other invoice will be submitted." When several orders are to be invoiced to an ordering activity during the same billing period, consolidated periodic billings are encouraged.

RECEIVING REPORT

Quantity in the "Quantity Accepted" column on the face of this order has been:
☐ inspected, ☐ accepted, ☐ received by me and conforms to contract.
Items listed below have been rejected for the reasons indicated.

SHIPMENT NUMBER	PARTIAL / FINAL	DATE RECEIVED	SIGNATURE OF AUTHORIZED U.S. GOV'T REPRESENTATIVE	DATE
TOTAL CONTAINERS	GROSS WEIGHT	RECEIVED AT	TITLE	

REPORT OF REJECTIONS

ITEM NO.	SUPPLIES OR SERVICES	UNIT	QUANTITY REJECTED	REASON FOR REJECTION

§ 1–16.901–148 Standard Form 148: Continuation Sheet for Standard Form 147.

STANDARD FORM 148, JUNE 1964—FED. PROC. REG. (41 CFR) 1-3.605 — 148-103

ORDER FOR SUPPLIES OR SERVICES

SCHEDULE—CONTINUATION

MARK ALL PACKAGES AND PAPERS WITH ORDER AND/OR CONTRACT NUMBERS ↓

PAGE NO. | DATE OF ORDER | CONTRACT NO. (If any) | ORDER NO.

ITEM NO.	SUPPLIES OR SERVICES	QUANTITY ORDERED	UNIT	UNIT PRICE	AMOUNT	QUANTITY ACCEPTED
	TOTAL CARRIED FORWARD TO 1st PAGE →					

SPECIMEN

STANDARD FORM 148, JUNE 1964

§ 1–16.901–251 Standard Form 251: U.S. Government Architect-Engineer Questionnaire.

(a) Page 1 of Standard Form 251.

STANDARD FORM 251, JUNE 1961 GENERAL SERVICES ADMINISTRATION FED. PROC. REG. (41 CFR) 1-16.603

U. S. GOVERNMENT ARCHITECT-ENGINEER QUESTIONNAIRE

See explanatory notes on page 9. | DATE (Month, day, and year)

1. FIRM NAME
2. ESTABLISHED — A. YEAR — B. STATE
3. TYPE OF ORGANIZATION (Check one): ☐ INDIVIDUAL ☐ PARTNERSHIP ☐ CORPORATION ☐ JOINT VENTURE ☐ OTHER (Explain in item 22)
4. FORMER FIRM NAME(S), if ANY, AND YEAR(S) ESTABLISHED
5. HOME OFFICE BUSINESS ADDRESS AND TELEPHONE NO.
6. PRESENT BRANCH OFFICE(S) — A. ADDRESS — B. TELEPHONE NO. — C. NAME OF PERSON IN CHARGE
7. PRINCIPALS OF FIRM — NAMES
8. ASSOCIATE MEMBERS OF FIRM — NAMES
9. KEY PERSONNEL OF FIRM (Names)
   - A. ARCHITECTS
   - B. STRUCTURAL ENGINEERS
   - C. ELECTRICAL ENGINEERS (Indicate Specialty)
   - D. LANDSCAPE ARCHITECTS
   - E. MECHANICAL ENGINEERS (Indicate Specialty)
   - F. PLANNERS (Indicate specialty as Site, City, Town, Community, etc.)
   - G. CIVIL ENGINEERS
   - H. MECHANICAL ENGINEERS (Indicate Specialty)
   - I. OTHER KEY PERSONNEL (Indicate Specialty)
10. NUMBER OF PERSONNEL IN YOUR PRESENT ORGANIZATION

LOCATED AT	A. PRINCIPALS & KEY PERSONNEL*			B. OTHER PERSONNEL										TOTALS
	ARCH. (1)	ENG. (2)	OTHER (3)	ARCH. (4)	ENGINEERS (5) MECH.	(6) ELEC.	(7) CIVIL	(8) OTHER	DRAFTSMEN (9)	SPEC. WRITERS (10)	ESTIMATORS (11)	INSPECTORS (12)	SURVEYORS (13)	BALANCE (14)	(15)
A. HOME OFFICE															
B. BRANCH OFFICES (Specify)															
C. TOTALS															

11. NUMBER OF PERSONNEL IN YOUR ORGANIZATION DURING LAST 5 YEARS — A. MAXIMUM NO. — B. YEAR — C. NORMAL STRENGTH

*(Total of items 7 and 9)

SPECIMEN

(b) Page 2 of Standard Form 251.

12. OUTSIDE ASSOCIATES AND CONSULTANTS USUALLY EMPLOYED BY YOUR FIRM
(Furnish a separate completed questionnaire for each firm or individual listed below but see note c, page 9)

a. CATEGORY	b. NAME OF FIRM OR INDIVIDUAL AND ADDRESS	a. CATEGORY	b. NAME OF FIRM OR INDIVIDUAL AND ADDRESS
A. ARCHITECTS		F. MECHANICAL ENGINEERS	
B. LANDSCAPE ARCHITECTS		G. ELECTRICAL ENGINEERS	
C. CIVIL ENGINEERS		H. PLANNERS	
D. STRUCTURAL ENGINEERS		I. ESTIMATORS	
E. SANITARY ENGINEERS		J. OTHER CONSULTANT (SPECIFY TYPE)	

13. INDICATE IN ORDER OF PRECEDENCE, USING "1," "2," "3," ETC., THE TYPES OF PROJECTS IN WHICH YOUR FIRM SPECIALIZES (*Work specialties not sufficiently identified by the printed general categories are to be listed separately in the blanks provided*)

____ ACOUSTICS • SOUND SUPPRESSION	____ HOSPITALS	____ PUBLIC BUILDINGS	
____ AIRFIELD FACILITIES	____ HOUSING	____ SURVEYS AND REPORTS	____
____ AIR COND. • REFRIG. • VENT.	____ INDUSTRIAL BUILDINGS	____ UTILITIES	____
____ BRIDGES	____ IRRIGATION OR DRAINAGE	____ WATER • SEWAGE	____
____ CHANNEL IMPROVEMENTS	____ LABORATORIES		
____ CHEMICAL FACILITIES	____ MANUALS	____	____
____ COMMUNICATIONS	____ MASTER PLANNING • SITE DEVELOP.	____	____
____ COMMERCIAL BUILDINGS	____ MILITARY STANDARD DESIGN	____	____
____ EARTH FILL DAM WORK	____ MISSILES • FACILITIES • FUELS	____	____
____ ELECTRONIC FACILITIES	____ NUCLEAR FACILITIES	____	____
____ HARBOR FACILITIES	____ PETROLEUM FACILITIES	____	____
____ HIGHWAYS	____ POWER • HEATING PLANTS	____	____

14. INDICATE THE SCOPE OF SERVICES PROVIDED BY YOUR FIRM WITHOUT USE OF OUTSIDE ASSOCIATES OR CONSULTANTS ON TYPES OF PROJECTS INDICATED IN ITEM 13 (*i.e. Architectural, Mechanical, Electrical, Structural, etc.*)

SPECIMEN

STANDARD FORM 251
JUNE 1961

• 2 •

(c) Page 3 of Standard Form 251.

15. PERSONAL HISTORY STATEMENT OF PRINCIPALS AND ASSOCIATES WITHIN YOUR FIRM
(Furnish complete data but keep to essentials)

a. NAME (*Last-first-middle initial*)

DATE OF BIRTH (*month-day-year*) | YEARS OF EXPERIENCE | AS PRINCIPAL IN THIS FIRM | AS PRINCIPAL IN OTHER FIRMS | OTHER THAN PRINCIPAL

EDUCATION (*College, degree, year, specialization*)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (*Type, year, State*)

b. NAME (*Last-first-middle initial*)

DATE OF BIRTH (*month-day-year*) | YEARS OF EXPERIENCE | AS PRINCIPAL IN THIS FIRM | AS PRINCIPAL IN OTHER FIRMS | OTHER THAN PRINCIPAL

EDUCATION (*College, degree, year, specialization*)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (*Type, year, State*)

c. NAME (*Last-first-middle initial*)

DATE OF BIRTH (*month-day-year*) | YEARS OF EXPERIENCE | AS PRINCIPAL IN THIS FIRM | AS PRINCIPAL IN OTHER FIRMS | OTHER THAN PRINCIPAL

EDUCATION (*College, degree, year, specialization*)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (*Type, year, State*)

d. NAME (*Last-first-middle initial*)

DATE OF BIRTH (*month-day-year*) | YEARS OF EXPERIENCE | AS PRINCIPAL IN THIS FIRM | AS PRINCIPAL IN OTHER FIRMS | OTHER THAN PRINCIPAL

EDUCATION (*College, degree, year, specialization*)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (*Type, year, State*)

e. NAME (*Last-first-middle initial*)

DATE OF BIRTH (*month-day-year*) | YEARS OF EXPERIENCE | AS PRINCIPAL IN THIS FIRM | AS PRINCIPAL IN OTHER FIRMS | OTHER THAN PRINCIPAL

EDUCATION (*College, degree, year, specialization*)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (*Type, year, State*)

f. NAME (*Last-first-middle initial*)

DATE OF BIRTH (*month-day-year*) | YEARS OF EXPERIENCE | AS PRINCIPAL IN THIS FIRM | AS PRINCIPAL IN OTHER FIRMS | OTHER THAN PRINCIPAL

EDUCATION (*College, degree, year, specialization*)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (*Type, year, State*)

SPECIMEN

STANDARD FORM 251
JUNE 1961

• 3 •

(d) Page 4 of Standard Form 251.

15. CONTINUED PERSONAL HISTORY STATEMENT OF PRINCIPALS AND ASSOCIATES WITHIN YOUR FIRM
(Furnish complete data but keep to essentials)

G. NAME (Last-first-middle initial)

DATE OF BIRTH (Month-day-year)	YEARS OF EXPERIENCE	AS PRINCIPAL IN THIS FIRM	AS PRINCIPAL IN OTHER FIRMS	OTHER THAN PRINCIPAL

EDUCATION (College, degree, year, specialization)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (Type, year, State)

H. NAME (Last-first-middle initial)

DATE OF BIRTH (Month-day-year)	YEARS OF EXPERIENCE	AS PRINCIPAL IN THIS FIRM	AS PRINCIPAL IN OTHER FIRMS	OTHER THAN PRINCIPAL

EDUCATION (College, degree, year, specialization)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (Type, year, State)

I. NAME (Last-first-middle initial)

DATE OF BIRTH (Month-day-year)	YEARS OF EXPERIENCE	AS PRINCIPAL IN THIS FIRM	AS PRINCIPAL IN OTHER FIRMS	OTHER THAN PRINCIPAL

EDUCATION (College, degree, year, specialization)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (Type, year, State)

J. NAME (Last-first-middle initial)

DATE OF BIRTH (Month-day-year)	YEARS OF EXPERIENCE	AS PRINCIPAL IN THIS FIRM	AS PRINCIPAL IN OTHER FIRMS	OTHER THAN PRINCIPAL

EDUCATION (College, degree, year, specialization)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (Type, year, State)

K. NAME (Last-first-middle initial)

DATE OF BIRTH (Month-day-year)	YEARS OF EXPERIENCE	AS PRINCIPAL IN THIS FIRM	AS PRINCIPAL IN OTHER FIRMS	OTHER THAN PRINCIPAL

EDUCATION (College, degree, year, specialization)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (Type, year, State)

L. NAME (Last-first-middle initial)

DATE OF BIRTH (Month-day-year)	YEARS OF EXPERIENCE	AS PRINCIPAL IN THIS FIRM	AS PRINCIPAL IN OTHER FIRMS	OTHER THAN PRINCIPAL

EDUCATION (College, degree, year, specialization)

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

REGISTRATION (Type, year, State)

SPECIMEN

STANDARD FORM 251
JUNE 1961

- 4 -

(e) Page 5 of Standard Form 251.

16. PRESENT ACTIVITIES ON WHICH YOUR FIRM IS DESIGNATED ARCHITECT OR ENGINEER OF RECORD

NAME AND TYPE OF PROJECT	LOCATION	NAME AND ADDRESS OF OWNER	ESTIMATED CONSTRUCTION COST	PERCENT COMPLETED	
				DESIGN	FIELD INSP.
TOTAL NUMBER OF PRESENT PROJECTS:		TOTAL ESTIMATED CONSTRUCTION COST:			

SPECIMEN

STANDARD FORM 251
JUNE 1961

- 5 -

(f) Page 6 of Standard Form 251.

17. PRESENT ACTIVITIES ON WHICH YOUR FIRM IS ASSOCIATED WITH OTHERS
(Indicate phase of work for which your firm is responsible)

NAME OF PROJECT AND PHASE OF WORK	LOCATION	OWNER	ESTIMATED CONSTRUCTION COST OF		PERCENT OF ENTIRE PROJECT COMPLETED		FIRM ASSOCIATED WITH
			ENTIRE PROJECT	WORK FOR WHICH YOUR FIRM IS RESPONSIBLE	DESIGN	FIELD SUPV.	
TOTAL NUMBER OF PRESENT PROJECTS:			TOTAL ESTIMATED CONSTRUCTION COST OF WORK FOR WHICH YOUR FIRM IS RESPONSIBLE:				

SPECIMEN

STANDARD FORM 251
JUNE 1961

- 6 -

(g) Page 7 of Standard Form 251.

18. COMPLETED WORK ON WHICH YOUR FIRM WAS DESIGNATED ARCHITECT OR ENGINEER OF RECORD DURING THE LAST 10 YEARS

NAME AND TYPE OF PROJECT	LOCATION	YEAR YOUR WORK CONPLETED	NAME AND ADDRESS OF OWNER	ESTIMATED CONSTRUCTION COST	CONSTRUCTED (Yes or No)
TOTAL NUMBER OF COMPLETED PROJECTS:		TOTAL ESTIMATED CONSTRUCTION COST:			

SPECIMEN

STANDARD FORM 251
JUNE 1961

- 7 -

(h) Page 8 of Standard Form 251.

19. COMPLETED WORK ON WHICH YOUR FIRM WAS ASSOCIATED WITH OTHER FIRMS DURING THE LAST 10 YEARS
(Indicate phase of work for which your firm was responsible.)

NAME OF PROJECT AND PHASE OF WORK	LOCATION	OWNER	YEAR YOUR WORK COMPLETED	ESTIMATED CONSTRUCTION COST OF: ENTIRE PROJECT	ESTIMATED CONSTRUCTION COST OF: WORK FOR WHICH YOUR FIRM WAS RESPONSIBLE	CONSTRUCTED (Yes or No)	FIRM ASSOCIATED WITH
TOTAL NUMBER OF COMPLETED PROJECTS:			TOTAL ESTIMATED CONSTRUCTION COST OF WORK FOR WHICH YOUR FIRM WAS RESPONSIBLE:				

SPECIMEN

STANDARD FORM 251 JUNE 1961

8

(i) Page 9 of Standard Form 251.

20. EXHIBITS OF COMPLETED WORK: *Unless specifically requested, submission of photographs is optional. Where submitted, furnish one exterior and one interior photograph of five examples of completed architectural work that are listed in items 18 and 19. (Photographs of models, renderings, sketches, etc., are NOT desired.) Size of photographs not to exceed 8½"x11". On the back of each photograph give the following information: (1) Name of your firm; (2) Name and address of client; (3) Type of structure; (4) Location of structure; (5) Cost of specific structure. Photographs of electrical or mechanical facilities and other components of a decided engineering character are not necessary.*

21. SECURITY CLEARANCE *(See Note d)*

A. CURRENT STATUS (Check one)	B. LEVEL OF CLEARANCE	C. DATE OF CLEARANCE	D. CLEARED BY	E. HAVE PRINCIPALS BEEN CLEARED?
☐ ACTIVE ☐ INACTIVE ☐ NONE				☐ YES ☐ NO

22. IN THE EVENT SPACES PROVIDED ON THE FORM ARE NOT SUFFICIENT FOR ENTRIES, OR IF YOU WISH TO FURNISH ADDITIONAL INFORMATION, IT MAY BE INSERTED HERE, ON THE REVERSE OF THIS PAGE, OR ON SEPARATE SHEETS, WITH APPROPRIATE REFERENCES.

SPECIMEN

23. PURPOSE OF SUBMITTING THIS QUESTIONNAIRE *(Check A or B, not both)*

☐ A. I/We wish to be considered for architectural or engineering services in connection with the ☐ design, ☐ inspection, ☐ supervision *(check applicable box or boxes)* of construction projects for Federal Agencies.

☐ B. This completed questionnaire is submitted as evidence of employment as outside associate or consultant. *(See item 12.)* NAME OF FIRM ASSOCIATED WITH:

As of this date: the foregoing is a true statement of facts.

NAME OF FIRM OR INDIVIDUAL SUBMITTING QUESTIONNAIRE	TYPE NAME AND TITLE OF PERSON SIGNING	SIGNATURE

NOTES: (a) Form is to be completed by typewriter. Completed forms may be reproduced in any quantity deemed necessary to meet distribution requirements.
(b) It will be to a firm's advantage to maintain its experience record on a current basis. This may be accomplished by periodically forwarding current data.
(c) It is NOT necessary for individuals or firms who check Item 23B to furnish separate questionnaires for their outside associates and consultants.
(d) Item 21 is for consideration only with respect to classified projects.

STANDARD FORM 251 JUNE 1961

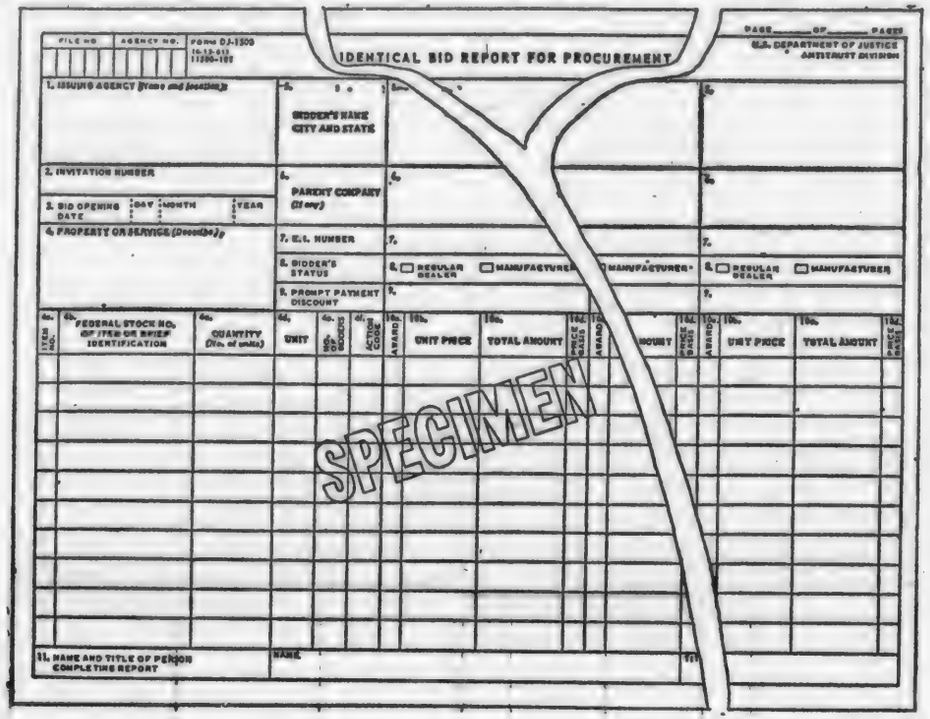
- 9 -

§ 1–16.902 [Reserved]

§ 1–16.903 Department of Justice forms.

Department of Justice forms are illustrated in this section in the same manner and for the same purpose as is stated in § 1–16.901 for standard forms.

§ 1–16.903–DJ1500 Form DJ–1500: Identical Bid Report for Procurement.



PART 1–17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

Sec.
1–17.000 Scope of part.

Subpart 1–17.1—General

1–17.101 Authority.
1–17.102 General policy.
1–17.103 Types of actions.
1–17.104 Definitions.
1–17.105 Reports.

Subpart 1–17.2—Requests for Contractual Adjustment

1–17.200 Scope of subpart.
1–17.201 [Reserved.]
1–17.202 [Reserved.]
1–17.203 [Reserved.]
1–17.204 Standards for deciding cases.
1–17.204–1 General.
1–17.204–2 Amendments without consideration.
1–17.204–3 Mistakes.
1–17.204–4 Informal commitments.
1–17.205 Limitations upon exercise of authority.
1–17.205–1 General limitations.
1–17.205–2 Additional limitations below secretarial level.
1–17.206 Contractual requirements.
1–17.207 Requests by contractors.
1–17.207–1 Filing requests.
1–17.207–2 Form of requests.
1–17.207–3 Preliminary record of requests.
1–17.207–4 Facts and evidence.
1–17.208 Processing cases.
1–17.208–1 Investigation.
1–17.208–2 Interagency coordination.
1–17.208–3 Disposition.
1–17.208–4 Records.

Subpart 1–17.3—Residual Powers

1–17.300 Scope of subpart.
1–17.301 Statutory limitation on delegation of authority.
1–17.302 Standards for using residual powers.
1–17.303 Procedures.
1–17.304 Records.

Subpart 1–17.4—Records of Requests and Dispositions

1–17.400 Scope of subpart.
1–17.401 Preliminary records.
1–17.402 Final records.
1–17.403 Sample format for preliminary and final records.

Subpart 1–17.5—Act and Executive Order

1–17.500 Scope of subpart.
1–17.501 The Act of August 28, 1958 (Public Law 85–804; 50 U.S.C. 1431–1435).
1–17.502 Executive Order No. 10789 of November 14, 1958.

AUTHORITY: The provisions of this Part 1–17 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1–17.000 Scope of part.

As distinguished from the normal principles and procedures set forth in the other parts of the FPR, this part establishes uniform regulations for entering into and amending or modifying contracts to facilitate the national defense under the extraordinary, emergency authority granted by the Act of August 28, 1958, Public Law 85–804 (50 U.S.C. 1431–1435), set forth in § 1–17.501, hereinafter referred to in this Part 1–17 as "the Act," and Executive Order No. 10789 of November 14, 1958 (3 CFR, 1958 Supp., pp. 72–74), as amended by Executive Order No. 11051 of September 27, 1962 (3 CFR, 1962 Supp., pp. 244–253), set forth in § 1–17.502, hereinafter referred to in this Part 1–17 as "the Executive Order."

Subpart 1–17.1—General

§ 1–17.101 Authority.

(a) The Act empowers the President to authorize departments and agencies exercising functions in connection with the national defense to enter into contracts or into amendments or modifications of contracts and to make advance payments, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. (Similar authority was formerly contained in Title II of the First War Powers Act, 1941, which, as extended, expired June 30, 1958.)

(b) The Executive Order authorizes the head of each agency named therein to delegate the authority conferred upon him thereby to any other officials within his agency, and to confer on any such officials the power to make further delegations of such authority within their respective organizations. However, under the Act and the Executive Order, authority to approve actions obligating the United States in an amount in excess of $50,000 may not be delegated below the secretarial level, as defined in § 1–17.104 (b).

§ 1–17.102 General policy.

(a) Authority conferred by the Act shall be delegated in a manner which will best serve the interests of the national defense and, at the same time, retain control over the exercise of the authority at a level within the agency which is high enough to insure uniformity of action.

(b) The authority conferred by the Act shall not be utilized so as to encourage carelessness and laxity on the part of persons engaged in the defense effort nor be relied upon where other adequate legal authority exists.

(c) The actions authorized under the Act shall be processed as expeditiously as practicable consistent with the care, restraint, and exercise of sound judgment, appropriate to such extraordinary authority.

§ 1–17.103 Types of actions.

The following three types of actions may be taken by or pursuant to the direction of an approving authority under the Act:

(a) Contractual adjustments such as amendments without consideration, correction of mistakes, and formalization of informal commitments (see Subpart 1–17.2).

(b) Making advance payments (procedures for making such payments are set forth in Subpart 1–30.4).

(c) Exercise of "residual powers," which refers to all other authority under the Act (see Subpart 1–17.3).

§ 1–17.104 Definitions.

As used in this Part 1–17, the following terms have the meanings set forth:

(a) "Approving authority" means an official or a contract adjustment board having authority to approve actions under the Act. This authority is distinguished from authority to take appropriate contractual action pursuant to such approval.

(b) "Secretarial level" means an official at or above the level of an assistant head of an agency or his deputy, and a contract adjustment board.

(c) "Defense contract" means an agreement of any kind (whether in the form of a letter of intent, purchase order, or otherwise) for property or services necessary, appropriate, or convenient for the national defense.

§ 1–17.105 Reports.

(a) The Act and the Executive Order provide that each agency shall, by March 15 of each year, submit to the Congress a report of all actions taken within the agency under the authority of the Act during the preceding calendar year.

(b) The report shall show the information set forth in (1) below for all actions approved, and in (2) below for all actions denied. In addition, for each approved action which involves actual or potential cost to the Government in excess of $50,000, the report shall show: name of contractor, actual cost or estimated potential cost, description of property or services involved, and a statement of the circumstances justifying the action.

(1) For actions approved:

(i) The total number of actions, total dollar amount requested, and total dollar amount approved; and

(ii) By type of action (amendments without consideration, correction of mistakes, formalization of informal commitments, and such other actions as appropriate), the number of actions, dollar amount requested, and dollar amount approved.

(2) For actions denied:

(i) The total number of actions and total dollar amount requested; and

(ii) By type of action, the number of actions and dollar amount requested.

(c) The report should omit any information which is classified "Confidential" or higher.

(d) A report is not required if no action (either approving or denying relief) was taken under the authority during the year.

Subpart 1–17.2—Requests for Contractual Adjustment

§ 1–17.200 Scope of subpart.

This subpart sets forth standards and procedures for the disposition of requests for contractual adjustment under the Act.

§ 1–17.201 [Reserved]

§ 1–17.202 [Reserved]

§ 1–17.203 [Reserved]

§ 1–17.204 Standards for deciding cases.

§ 1–17.204–1 General.

The mere fact that losses occur under a defense contract is not, by itself, a sufficient basis for the exercise of the authority conferred by the Act. Whether, in a particular case, appropriate action such as amendment without consideration, correction of a mistake or ambiguity in a contract, or formalization of an informal commitment, will facilitate the national defense is a matter of sound judgment to be made on the basis of all the facts of such case. Although it is obviously impossible to predict or enumerate all the types of cases with respect to which action may be appropriate, examples of certain cases or types of cases where action may be proper are set forth in §§ 1–17.204–2 through 1–17.204–4. Even if all of the factors contained in any of the examples are present, other factors or considerations in a particular case may warrant denial of the request. These examples are not intended to exclude other cases where an approving authority determines that the circumstances warrant action.

§ 1–17.204–2 Amendments without consideration.

(a) Where an actual or threatened loss under a defense contract, however caused, will impair the productive ability of a contractor whose continued performance on any defense contract or whose continued operation as a source of supply is found to be essential to the national defense, the contract may be adjusted but only to the extent necessary to avoid such an impairment of the contractor's productive ability.

(b) Where a contractor suffers a loss (not merely a diminution of anticipated profits) on a defense contract as a result of Government action, the character of the Government action will generally determine whether any adjustment in the contract will be made and its extent. Where the Government action is directed primarily at the contractor and is taken by the Government in its capacity as the other contracting party, the contract may be adjusted if fairness so requires; thus, where such Government action, although not creating any liability on its part, increases the cost of performance, considerations of fairness may make appropriate some adjustment of the contract.

§ 1–17.204–3 Mistakes.

(a) A defense contract may be amended or modified to correct or mitigate the effect of a mistake. The following are examples:

(1) A mistake or ambiguity which consists of the failure to express, or to express clearly, in a written contract the agreement as both parties understood it.

(2) A mistake on the part of the contractor which is so obvious that it was or should have been apparent to the contracting officer.

(3) A mutual mistake as to a material fact.

(b) Amending defense contracts to correct mistakes with the least possible delay normally will facilitate the national defense by expediting the procurement program and by giving contractors proper assurance that such mistakes will be corrected expeditiously and fairly.

§ 1–17.204–4 Informal commitments.

Informal commitments may be formalized under certain circumstances to permit payment to persons who have taken action without a formal defense contract; for example, where any person, pursuant to written or oral instructions from an official of an agency and relying in good faith upon the apparent authority of the official to issue such instructions, has arranged to furnish or has furnished property or services to the agency or to a defense contractor or subcontractor without formal contractual coverage for such property or services. Formalization of commitments under such circumstances normally will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously.

§ 1–17.205 Limitations upon exercise of authority.

§ 1–17.205–1 General limitations.

(a) The Act is not authority for:

(1) The use of the cost-plus-a-percentage-of-cost system of contracting;

(2) The making of any contract in violation of existing law relating to limitation of profit or fees;

(3) The negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding; or

(4) The waiver of any bid, payment, performance or other bond required by law.

(b) No contracts, amendments, or modifications shall be entered into under authority of the Act:

(1) Unless a finding is made that the action will facilitate the national defense;

(2) Unless other legal authority within the agency concerned is deemed to be lacking or inadequate; and

(3) Except within the limits of the amounts appropriated and the statutory contract authorization.

(c) No contract shall be amended or modified:

(1) Unless the request therefor has been filed before all obligations (including final payment) under the contract have been discharged; and

(2) If the contract was negotiated under section 302(c)(14) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 252(c)(14)) or under 10 U.S.C. 2304(a)(15), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

(d) No informal commitment shall be formalized:

(1) Unless a request for payment has been filed within six months after arranging to furnish or furnishing property or services in reliance upon the commitment; and

(2) Unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

§ 1–17.205–2 Additional limitations below secretarial level.

The exercise of authority by officials below the secretarial level shall be subject to the following additional limitations:

(a) The action shall not deal with or directly affect any matter which has been submitted to the General Accounting Office.

(b) The action shall not obligate the Government in an amount in excess of $50,000.

(c) The action shall not release a contractor from performance of an obligation—

(1) Priced in excess of $50,000; or

(2) Where reprocurement is contemplated, unless the approving authority finds that the estimated actual or potential increase in cost to the Government will not exceed $50,000.

(d) The action shall not involve the disposal of Government surplus property.

(e) Mistakes shall not be corrected by action obligating the Government in an amount in excess of $500 unless notice of the mistake was given to the contracting officer before completion of the contractor's work or the effective date of contract termination.

(f) The correction of a contract because of a mistake in its making shall not result in increasing the original contract price above the next lowest responsive bid of a responsible bidder in the case of a formally advertised procurement, or the amount of the next lowest responsive proposal (at the time of award) of a responsible offeror considered in the case of a negotiated procurement.

§ 1–17.206 Contractual requirements.

Every contract entered into or amended or modified pursuant to this Part 1–17 shall contain:

(a) A citation of the Act and the Executive Order;

(b) A brief statement of the circumstances justifying the action;

(c) A recital of the finding that the action will facilitate the national defense;

(d) The contract clause entitled "Covenant Against Contingent Fees," as set forth in § 1–1.503;

(e) A contract clause in accordance with the examination of records requirements of section 3(b) of the Act (see § 1–3.814–2(e)), unless (1) the contract is for purchases authorized to be made outside the United States under the Foreign Assistance Act of 1961, and (2) pursuant to Executive Order No. 10784 of

October 1, 1958 (3 CFR, 1958 Supp., p. 69), as amended by Executive Order No. 10845 of October 12, 1959 (3 CFR, 1959 Supp., p. 133), it is determined by the agency that inclusion of such clause or compliance therewith (if included) would be impracticable;

(f) The Equal Opportunity clause, as set forth in § 1-7.101-18, where the clause is applicable under the rules and regulations of the President's Committee on Equal Employment Opportunity issued pursuant to Executive Order No. 10925 of March 6, 1961 (3 CFR, 1961 Supp., pp. 86-92), as amended by Executive Order No. 11114 of June 22, 1963 (3CFR, 1963 Supp., pp. 185-189);

(g) The contract clause entitled "Assignment of Claims," as set forth in § 1-7.101-8;

(h) If otherwise applicable, the contract clause entitled "Walsh-Healey Public Contracts Act," as set forth in § 1-12.605; the contract clauses entitled "Davis-Bacon Act" and "Copeland (Anti-Kickback) Act—Nonrebate of Wages," as set forth in Standard Form 19A (see § 1-16.901-19A); and the contract clause entitled "Contract Work Hours Standards Act—Overtime Compensation," as provided in § 1-7.101-16.

(i) Where an indemnification agreement is authorized under the Act, a contract clause providing that the Government's obligation under the agreement is expressly conditioned upon and subject to the availability of appropriated funds from which payment can be made; and

(j) Any other clauses which are appropriate to the particular procurement or required by law or regulation.

§ 1-17.207 Requests by contractors.

§ 1-17.207-1 Filing requests.

Any person seeking an adjustment under the standards set forth in § 1-17.204 (hereinafter referred to in this subpart as the "contractor") may file a request in duplicate with the cognizant contracting officer or his duly authorized representative. If such filing is impracticable, requests will be deemed to be properly filed if filed with the agency head.

§ 1-17.207-2 Form of requests.

The contractor's request shall normally consist of a letter to the contracting officer stating:

(a) The precise adjustment requested;

(b) The essential facts summarized in chronological narrative form;

(c) The contractor's conclusions based on such facts and showing, in terms of the standards set forth in § 1-17.204, why the contractor considers himself entitled to the adjustment requested;

(d) Whether all obligations have been discharged under the contracts involved;

(e) Whether final payment has been made under the contracts involved;

(f) Whether any proceeds from the request will be subject to any assignment or other transfer, and to whom; and

(g) Whether the contractor has sought the same, or a similar or related, adjustment from the General Accounting Office or any other part of the Government, or anticipates doing so.

§ 1-17.207-3 Preliminary record of requests.

At the time the contractor's request is filed, a preliminary record thereof, as described in Subpart 1-17.4, shall be prepared.

§ 1-17.207-4 Facts and evidence.

(a) *General.* The contracting officer or an approving authority shall, where considered appropriate, request the contractor to furnish additional facts and evidence, as described in this paragraph (a), and, in addition, where applicable, as described in (b), (c), (d), or (e) of this § 1-17.207-4. (In complying with such requests, the contractor may also submit other statements and evidence which he may consider helpful to the case.):

(1) If written contracts are involved, a brief description of the contracts, indicating the dates of execution and amendments thereto, the items being procured, the price or prices and delivery schedules and revisions thereof, and such other special contractual provisions as may be relevant to the request;

(2) A history of performance indicating when work under the contracts or commitments was begun, the progress made to the present, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion thereof;

(3) A statement of payments received, payments due, and payments yet to be received or to become due, including advance and progress payments, and amounts withheld by the Government, and information as to other obligations of the Government, if any, which are yet to be performed under the contract;

(4) A statement giving a detailed analysis of the monetary elements of the request including precisely how the actual or estimated dollar amount of the request was arrived at, the effect of approval or denial on the contractor's profits before Federal income taxes, and whether the costs for which reimbursement is requested have been included as a part of his gross costs in statutory renegotiation proceedings, together with the contractor's renegotiation status for the relevant years;

(5) If a written contract is involved, a statement of the contractor's understanding of why the subject matter of the request cannot now, and could not at the time it arose, be disposed of under the terms of the contract itself;

(6) The best evidence available to the contractor in support of any facts alleged by the contractor, including contemporaneous memoranda, correspondence, affidavits, and any other material tending to establish matters of fact;

(7) Relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, including such additional financial data as are necessary to explain fully and to support the monetary elements of the request for adjustment;

(8) A list of persons (within the agency, in the employ of the contractor, or otherwise connected with the contract) who have some factual knowledge of the subject matter, including where possible the name, office or title, address, and telephone number of each such person;

(9) A statement and evidence of steps taken to mitigate loss and reduce claims to a minimum; and

(10) Such other statements or evidence as may be requested by the contracting officer.

(b) *Amendments without consideration under § 1-17.204-2(a).* In addition to the facts and evidence listed in § 1-17.207-4(a), where a request involves possible amendment without consideration and essentiality to the national defense is a factor, the contractor shall be asked to furnish such of the following as is deemed appropriate to the request:

(1) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances and profit;

(2) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if enabled to complete them, broken down as between costs accrued to date of request and run-out costs, and as between costs for which the contractor has made payment and those for which he is indebted at the time of the request;

(3) A statement and evidence of the contractor's estimate of the final contract price of the contracts involved giving effect to all escalation, changes, extras, and the like, known or contemplated by the contractor;

(4) A statement of any claims known or contemplated by the contractor against the Government involving the contracts in question, other than those stated in response to § 1-17.207-4(b)(3);

(5) An estimate of the contractor's total profit or loss under the contracts involved if enabled to complete at the estimated final contract price (see § 1-17.207-4(b)(3)), broken down between profit or loss to date and run-out profit or loss;

(6) An estimate of the contractor's total profits or losses from other Government business, and all other sources, during the period from the date of the first contract involved to the estimated date of completion of all the contracts involved;

(7) A statement of the amount of any tax refunds and an estimate of those anticipated during or for the period from the date of the first contract involved through the estimated completion date of all the contracts involved;

(8) A statement in detail as to efforts the contractor has made to obtain funds from commercial sources to enable him to complete performance of the contracts involved;

(9) A statement of the minimum amount necessary as an amendment without consideration to enable the contractor to complete performance of the contracts involved, and the detailed basis for that amount;

(10) An estimate of the time required to complete each contract if the request is granted;

(11) A statement of the factors which have caused the loss under the contracts involved;

(12) A statement as to the course of events anticipated if the request is denied;

(13) Balance sheets, preferably certified by a certified public accountant, (i) as of the end of the contractor's fiscal year first preceding the date of the first contract, (ii) as of the end of each subsequent fiscal year, (iii) as of the date of the request, and (iv) projected as of the date of completion of all the contracts involved assuming the contractor is enabled to complete the contracts at the final prices estimated pursuant to § 1-17.207-4(b)(3), together with income statements for annual periods subsequent to the date of the first balance sheet. Balance sheets and income statements should be both consolidated and by affiliates, and should show all transactions between the contractor and his affiliates, stockholders, and partners, including loans to the contractor guaranteed by any stockholder or partner; and

(14) A list of all salaries, bonuses, and all other forms of compensation of the principal officers or partners and of all dividends and other withdrawals, and all payments to stockholders in any form since the date of the first contract involved.

(c) *Amendments without consideration under § 1-17.204-2(b).* In addition to the facts and evidence listed in § 1-17.207-4(a), where a request involves possible amendment without consideration because of Government action, and essentiality to the national defense is not a factor, the contractor shall be asked to furnish such of the following as is deemed appropriate to the request:

(1) A clear statement of the precise Government action which the contractor considers caused a loss under the contract, with evidence to support each essential fact;

(2) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit;

(3) The estimated total loss suffered under the contract, with detailed supporting analysis; and

(4) The estimated loss resulting from the Government action, with detailed supporting analysis.

(d) *Correction of mistakes under § 1-17.204-3.* In addition to the facts and evidence listed in § 1-17.207-4(a), where a request involves possible correction of a mistake, the contractor shall be asked to furnish such of the following as is deemed appropriate to the request:

(1) A statement and evidence of the precise mistake or error that was made, the ambiguity that exists, or the misunderstanding that arose, showing of what it consisted and how it occurred, and the intention of the parties;

(2) A statement explaining when the mistake was discovered, when notice of mistake was given to the contracting officer, and whether given before completion of work under, or the effective date of termination of, the contract;

(3) An estimate of loss or profit under the contract with detailed supporting analysis; and

(4) An estimate of the increase in cost to the Government resulting from the adjustment requested, with detailed supporting analysis.

(e) *Formalization of informal commitments under § 1-17.204-4.* In addition to the facts and evidence listed in § 1-17.207-4(a), where a request involves possible formalization of an informal commitment, the contractor shall be asked to furnish such of the following as is deemed appropriate to the request:

(1) Copies of any written instructions or assurances, or a statement under oath as to any oral instructions or assurances made to the contractor, with identification of the Government official making such statement;

(2) A statement as to when the property or services were furnished or arranged to be furnished, and to whom;

(3) Evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances which led him so to rely, and that the contractor intended, at the time of performing the work, to be compensated directly for it by the Government and did not anticipate recovery of the costs in some other way;

(4) A cost breakdown supporting the amount claimed as a fair compensation for the work performed; and

(5) A statement and evidence of why it was impracticable to provide for the work performed in an appropriate contractual instrument.

§ 1-17.208 Processing cases.

All cases shall be processed in accordance with the general policy set forth in § 1-17.102(c).

§ 1-17.208-1 Investigation.

A thorough investigation shall be made of all facts and issues relevant to each case. Facts and evidence shall be obtained from contractor and Government personnel, and shall include signed statements of material facts within the knowledge of individuals where documentary evidence is lacking, and audits where considered necessary to establish financial or cost facts.

§ 1-17.208-2 Interagency coordination.

Where a case involves matters of interest to more than one agency of the Government, such agencies should maintain liaison with each other for the purpose of determining whether joint action may be taken under the circumstances.

§ 1-17.208-3 Disposition.

(a) In each case, the approving authority (if a contract adjustment board, the Chairman), whether approving or denying the request, shall sign a Memorandum of Decision which shall be dated and shall contain the following:

(1) The name and address of the contractor, the contract identification, and the nature of the request;

(2) The decision reached and the actual cost or estimated potential cost, if any, of the decision;

(3) A concise description of the property or services involved;

(4) A statement of the circumstances justifying the decision; and

(5) If some adjustment action is approved, a statement in substantially the following form: "I find that the action authorized herein will facilitate the national defense."

(b) Where the Memorandum of Decision contains information which is classified "Confidential" or higher, such information shall be identified in the Memorandum. In lieu of including classified information in the Memorandum, such information may be set forth in a separate classified document which is referenced in the Memorandum.

§ 1-17.208-4 Records.

The following shall be retained in the agency files with respect to each request processed:

(a) The Memorandum of Decision required in § 1-17.208-3;

(b) The contractor's request;

(c) Memoranda, correspondence, affidavits, statements, and all other documents containing information acquired in connection with the request;

(d) A copy of the contractual document implementing any approved contractual action; and

(e) The final record prepared in accordance with § 1-17.402.

Subpart 1–17.3—Residual Powers

§ 1–17.300 Scope of subpart.

This subpart prescribes the standards and procedures for the exercise of residual powers under the Act. The term "residual powers" as used in this subpart includes all the authority under the Act except that which is covered by Subpart 1–17.2 and the authority to make advance payments.

§ 1–17.301 Statutory limitation on delegation of authority.

Authority to approve actions obligating the United States in an amount in excess of $50,000 under the residual powers of the Act shall not be delegated below the secretarial level.

§ 1–17.302 Standards for using residual powers.

Subject to the limitations contained in § 1–17.205–1, the residual powers may be used in accordance with the policies set forth in § 1–17.102 where such use is deemed necessary and appropriate.

§ 1–17.303 Procedures.

(a) With respect to each proposal for the exercise of residual powers, the approving authority shall sign a memorandum containing information substantially as set forth in § 1–17.208–3.

(b) Every contract entered into or amended or modified under the residual powers shall comply with the provisions of § 1–17.206.

§ 1–17.304 Records.

A copy of each memorandum required by § 1–17.303(a) shall be retained in the agency files.

Subpart 1–17.4—Records of Requests and Dispositions

§ 1–17.400 Scope of subpart.

In order that adequate records of actions taken pursuant to the Act may be maintained, § 1–17.207–3 requires the preparation of a preliminary record when each request is filed for any adjustment under the standards set forth in § 1–17.204, and § 1–17.208–4 requires the preparation of a final record indicating the disposition of the request. This subpart describes in detail the information which should be included in these records. A suggested format for the records is shown in § 1–17.403. It is designed so that the information required for the preliminary and final record with respect to each request may be combined on the same form.

§ 1–17.401 Preliminary records.

Each preliminary record prepared pursuant to § 1–17.207–3 should contain the following information:

(a) *Type of record.* The fact that the record is a preliminary record should be indicated.

(b) *Date of contractor's request.* The date on the face of the contractor's request for adjustment should be inserted.

(c) *Date received by Government.* The date the request for adjustment is received in any Government office to which the contractor may properly submit his request should be inserted.

(d) *Name and address of contractor.* The full and correct name and address of the contractor filing the request should be inserted. If the contractor is a small business, this fact should be indicated.

(e) *Name and address of contractor's representative, if any.* If a particular named person (employee, attorney, etc.) is the point of contact with the contractor, his full name and address should be inserted.

(f) *Cognizant contracting officer or office.* The contracting officer administering the contract for which an adjustment was requested or, if none, the contracting officer or office cognizant of the request should be inserted.

(g) *Procuring activity.* The name of the procuring activity with jurisdiction over the contracting officer or office referred to in (f) above should be inserted.

(h) *Property or service involved.* A brief description of the item being procured or services being rendered should be inserted.

(i) *Extent of performance as of date of request.* A brief indication, as of the date of the request, of the degree of completion of the contract should be inserted; for example, 50 percent completed, or performance not yet begun. If work is completed, indicate date of completion and whether final payment has been made.

(j) *Contract number and date.* The identifying numbers and dates of the contracts for which an adjustment is requested should be inserted. If there is no contract, then the word "None" should be inserted. If the question arises under a letter of intent, then that fact and the date of such letter should be inserted.

(k) *Advertised or negotiated.* Whether the contract was entered into pursuant to advertising or negotiation should be indicated. If negotiated, the specific authority should be indicated, e.g., "Neg. 302(c)(14) of FPAS Act" (Federal Property and Administrative Services Act of 1949).

(l) *Type of contract.* The type of contract involved (see Subpart 1–3.4) should be inserted, e.g., "FFP" (firm fixed price), "CPFF" (cost-plus-a-fixed-fee), or "T&M" (time and materials).

(m) *Category of case.* Whether the request involves an amendment without consideration, a mistake, or an informal commitment should be indicated. If the case involves two or more categories, each should be indicated; however, the most significant category involved should be listed first.

(n) *Amount or description of request.* If the request is expressed in dollars, as a change in price, then that fact should be inserted as follows: "$5,250 increase" or "$5,250 decrease." If the request seeks an adjustment which cannot be expressed in monetary terms, then some brief description of it should be inserted, such as "Cancellation" or "Modification of Terms." The fact that an adjustment is not easily expressed in dollar terms should not deter an estimate if such an estimate is made by the contractor in his request.

(o) *Date this record signed.* The date on which the record is signed should be inserted.

(p) *Signature.* The record should be signed by an authorized representative of the reporting authority.

§ 1–17.402 Final records.

Each final record prepared pursuant to § 1–17.208–4 should contain the information listed in (b) through (p) of § 1–17.401 and, in addition, should contain the following information:

(a) *Type of record.* The fact that the record is a final record should be indicated.

(b) *Action below secretarial level.* The disposition of the case, the office which took action, and the date thereof should be inserted. The disposition should be indicated as: "withdrawn," "denied," "approved," or "forwarded." If the request was approved in whole or in part, the dollar amount or nature of the action should be indicated in a manner similar to that described in § 1–17.401 (n). Where the request is denied or approved, the date should correspond to the date of the Memorandum of Decision issued in accordance with § 1–17.208–3.

(c) *Action at secretarial level.* The disposition of the case at secretarial level and the date thereof should be indicated in a manner similar to that described in § 1–17.402(b).

(d) *Implementation and date.* The nature of the contractual document or correspondence which implements the decision of the approving authority should be indicated as follows: "amendment," "new contract," or "letter of denial."

§ 1–17.403 Sample format for preliminary and final records.

The following is a suggested format for the preliminary and final records described in §§ 1–17.401 and 1–17.402:

☐ PRELIMINARY

RECORD OF
REQUEST FOR ADJUSTMENT
PUBLIC LAW 85-804

☐ FINAL

DATE OF REQUEST	DATE RECEIVED BY GOVERNMENT
CONTRACTOR'S NAME AND ADDRESS	☐ SMALL BUSINESS
NAME AND ADDRESS OF CONTRACTOR'S REPRESENTATIVE, IF ANY	
COGNIZANT CONTRACTING OFFICER OR OFFICE	PROCURING ACTIVITY
PROPERTY OR SERVICE INVOLVED	EXTENT OF PERFORMANCE AS OF DATE OF REQUEST
CONTRACT NUMBER / DATE	ADVERTISED OR NEGOTIATED / TYPE OF CONTRACT
CATEGORY OF CASE	AMOUNT OR DESCRIPTION OF REQUEST
ACTION BELOW SECRETARIAL LEVEL	DATE
ACTION AT SECRETARIAL LEVEL (INCLUDES CAB)	DATE
IMPLEMENTATION	DATE
ADDITIONAL DATA OR REMARKS	
DATE THIS RECORD SIGNED	SIGNATURE

SPECIMEN

Subpart 1–17.5—Act and Executive Order

§ 1–17.500 Scope of subpart.

This subpart sets forth in full the Act and the Executive Order.

§ 1–17.501 The Act of August 28, 1958 (Public Law 85–804; 50 U.S.C. 1431–1435).

The Act is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President may authorize any department or agency of the Government which exercises functions in connection with the national defense, acting in accordance with regulations prescribed by the President for the protection of the Government, to enter into contracts or into amendments or modifications of contracts heretofore or hereafter made and to make advance payments thereon, without regard to other provisions of law relating to the making, performance, amendment, or modification of contracts, whenever he deems that such action would facilitate the national defense. The authority conferred by this section shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or an assistant head or his deputy, of such department or agency, or by a Contract Adjustment Board established therein.

SEC. 2. Nothing in this Act shall be construed to constitute authorization hereunder for—

(a) The use of the cost-plus-a-percentage-of-cost system of contracting;

(b) Any contract in violation of existing law relating to limitation of profits;

(c) The negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) The waiver of any bid, payment, performance, or other bond required by law;

(e) The amendment of a contract negotiated under section 2304(a)(15), title 10, United States Code, or under section 302(c)(13)[1] of the Federal Property and Administrative Services Act of 1949, as amended (63 Stat. 377, 394), to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) The formalization of an informal commitment, unless it is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

SEC. 3. (a) All actions under the authority of this Act shall be made a matter of public record under regulations prescribed by the President and when deemed by him not to be detrimental to the national security.

(b) All contracts entered into, amended, or modified pursuant to authority contained in this Act shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of and involving transactions related to such contracts or subcontracts.

SEC. 4. (a) Every department and agency acting under authority of this Act shall, by March 15 of each year, report to Congress all such actions taken by that department or agency during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall—

(1) Name the contractor;

(2) State the actual cost or estimated potential cost involved;

(3) Describe the property or services involved; and

(4) State further the circumstances justifying the action taken.

With respect to (1), (2), (3), and (4), above, and under regulations prescribed by the President, there may be omitted any information the disclosure of which would be detrimental to the national security.

(b) The Clerk of the House and the Secretary of the Senate shall cause to be published in the Congressional Record all reports submitted pursuant to this section.

SEC. 5. This Act shall be effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate.

§ 1–17.502 Executive Order No. 10789 of November 14, 1958.[2]

The Executive Order is as follows:

AUTHORIZING AGENCIES OF THE GOVERNMENT TO EXERCISE CERTAIN CONTRACTING AUTHORITY IN CONNECTION WITH NATIONAL DEFENSE FUNCTIONS AND PRESCRIBING REGULATIONS GOVERNING THE EXERCISE OF SUCH AUTHORITY

By virtue of the authority vested in me by the act of August 28, 1958, 72 Stat. 972, hereinafter called the act, and as President of the United States, and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950, and deeming that such action will facilitate the national defense, it is hereby ordered as follows:

PART I—DEPARTMENT OF DEFENSE

Under such regulations, which shall be uniform to the extent practicable, as may be prescribed or approved by the Secretary of Defense:

1. The Department of Defense is authorized, within the limits of the amounts appropriated and the contract authorization provided therefor, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever, in the judgment of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, the national defense will be facilitated thereby.

2. The Secretaries of Defense, the Army, the Navy, and the Air Force, respectively, may exercise the authority herein conferred and, in their discretion and by their direction, may delegate such authority to any other military or civilian officers or officials of their respective departments, and may confer upon any such military or civilian officers or officials the power to make further delegations of such authority within their respective commands or organizations: *Provided,* that the authority herein conferred shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or by a departmental Contract Adjustment Board.

3. The contracts hereby authorized to be made shall include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of property or services necessary, appropriate, or convenient for the national defense, or for the invention, development, or production of, or research concerning, any such property or services, including, but not limited to, aircraft, missiles, buildings, vessels, arms, armament, equipment or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine tools, and any other equipment without any restriction of any kind as to type, character, location, or form.

4. The Department of Defense may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance payments upon such contracts of any portion of the contract price, and may enter into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds. Amendments or modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making, or the form, or the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

5. Proper records of all actions taken under the authority of the act shall be maintained within the Department of Defense. The Secretaries of Defense, the Army, the Navy, and the Air Force shall make such records available for public inspection except to the extent that they, or their duly authorized representatives, may respectively deem the disclosure of information therein to be detrimental to the national security.

6. The Department of Defense shall, by March 15 of each year, report to the Congress all actions taken within that department under the authority of the act during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall (except as the disclosure of such information may be deemed to be detrimental to the national security)—

(a) name the contractor;

(b) state the actual cost or estimated potential cost involved;

(c) describe the property or services involved; and

(d) state further the circumstances justifying the action taken.

7. There shall be no discrimination in any act performed hereunder against any person on the ground of race, religion, color, or national origin, and all contracts entered into, amended, or modified hereunder shall contain such nondiscrimination provision as otherwise may be required by statute or Executive order.

8. No claim against the United States arising under any purchase or contract made under the authority of the act and this order shall be assigned except in accordance with the Assignment of Claims Act of 1940 (54 Stat. 1029), as amended.

9. Advance payments shall be made hereunder only upon obtaining adequate security.

10. Every contract entered into, amended, or modified pursuant to this order shall contain a warranty by the contractor in substantially the following terms:

"The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona-fide employees or bona-fide

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[1] Section 302(c)(13) amended by Public Law 85–800 to read 302(c)(14).

[2] As amended by Executive Order No. 11051 of September 27, 1962.

established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

11. All contracts entered into, amended, or modified pursuant to authority of this order shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to, such contracts or subcontracts.

12. Nothing herein contained shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;

(b) any contract in violation of existing law relating to limitation of profits or fees;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304(a)(15) of title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) the formalization of an informal commitment, unless the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, finds that at the time the commitment was made it was impracticable to use normal procurement procedures.

13. The provisions of the Walsh-Healey Act (49 Stat. 2036), as amended, the Davis-Bacon Act (49 Stat. 1011), as amended, the Copeland Act (48 Stat. 948), as amended, and the Eight Hour Law (37 Stat. 137), as amended, if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 2, 1951, or any amendments or extensions thereof, or the continuance in force of any action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

PART II—EXTENSION OF PROVISIONS OF PARAGRAPHS 1–14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following-named agencies[3] is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury.
Department of the Interior.
Department of Agriculture.
Department of Commerce.
Atomic Energy Commission.
General Services Administration.
National Aeronautics and Space Administration.
Federal Aviation Agency.
Tennessee Valley Authority.
Government Printing Office.

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to his agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part I of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under section 302(c)(14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2(b) of the act of August 28, 1958, 72 Stat. 966, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

DWIGHT D. EISENHOWER

[3] Executive Order No. 11051 of September 27, 1962, deleted the Office of Civil and Defense Mobilization.

PART 1–30—CONTRACT FINANCING

Sec.
1–30.000 Scope of part.

Subpart 1–30.1—Forms of Financing

1–30.100 Scope of subpart.
1–30.101 Guaranteed loans—authority.
1–30.102 Guaranteed loans—description.
1–30.103 Advance payments—authority.
1–30.104 Advance payments—description.
1–30.105 Progress payments—authority.
1–30.106 Progress payments—description.
1–30.107 [Reserved]
1–30.108 Partial payments—authority.
1–30.109 Partial payments—description.

Subpart 1–30.2—Basic Policies

1–30.200 Scope of subpart.
1–30.201 Acceleration of payments.
1–30.202 Timely action.
1–30.203 Supplemental agreement.
1–30.204 Small business.
1–30.205 Purpose of contract financing.
1–30.206 Support of procurement-minimizing monetary loss.
1–30.207 Reasonable need.
1–30.208 Working capital purposes.
1–30.209 Order of preference.
1–30.210 Financing not a handicap.
1–30.211 Financial responsibility of contractors.
1–30.211–1 Small volume of work.
1–30.211–2 Large volume of work.
1–30.211–3 Unrealistic cost estimates.
1–30.211–4 Technical and engineering evaluation.
1–30.211–5 Importance of type of contract—development.
1–30.211–6 Engineering, production, and purchase plans.
1–30.212 Coordination before contract award.
1–30.213 Financial information and analysis.
1–30.214 Appropriate information—purposes.
1–30.214–1 Cash flow forecast and estimated financial statements.
1–30.214–2 Realistic assumptions.
1–30.214–3 Estimated profit and loss statements and balance sheets.
1–30.215 Termination financing.
1–30.216 Report of adverse developments—prompt decisions.
1–30.217 [Reserved]
1–30.218 [Reserved]
1–30.219 [Reserved]
1–30.220 Foreign procurement.
1–30.220–1 Progress payments on contracts for foreign performance.
1–30.220–2 Advance payments on contracts for foreign performance.
1–30.220–3 Guaranteed loans for foreign contract performance.
1–30.221 Formats suggested for financial projections.
1–30.221–1 Format 221–1, Projection of financial statements.
1–30.221–2 Format 221–2, Interrelationship of projection of financial statements.

Subpart 1–30.3 [Reserved]

Subpart 1–30.4—Advance Payments

1–30.400 Scope of subpart.
1–30.401 Types of contracts that may have advance payments.
1–30.402 Advance payments in addition to progress or partial payments.
1–30.403 Interest.
1–30.404 Standards—amounts—need.
1–30.405 Statutory requirements.
1–30.406 Responsibility—delegation of authority.
1–30.407 The Act of August 28, 1958, Public Law 85–804—Formally advertised contracts.
1–30.407–1 Special contract provisions.
1–30.407–2 Data.
1–30.408 Uses of advance payments.
1–30.409 Standards for advance payment determinations.
1–30.410 Findings, determinations, and authorization.
1–30.411 Application for advance payment.
1–30.412 Action by contracting officer.
1–30.413 Security — supervision — covenants.
1–30.414 Agreement for special bank account and contract provisions.
1–30.414–1 Form of agreement for special bank account.
1–30.414–2 Contract provisions for advance payments.
1–30.415 [Reserved]
1–30.416 [Reserved]
1–30.417 [Reserved]
1–30.418 [Reserved]
1–30.419 Excluded advance payments.

Subpart 1–30.5—Progress Payments Based on Costs

1–30.500 Scope of subpart.
1–30.500–1 Exclusions.
1–30.501 Percentage or stage of completion.
1–30.502 General.
1–30.502–1 Procurement by negotiation—requests for proposals.
1–30.503 Customary progress payments—standards.
1–30.503–1 Applicability of percentages.
1–30.503–2 Indefinite quantity contracts.
1–30.503–3 Administration.
1–30.504 Formal advertising—small business restricted advertising.
1–30.504–1 Progress payment provision in invitations for bids.
1–30.504–2 Small business restricted advertising.

Sec.	
1-30.504-3	Progress payments exclusively for small business.
1-30.504-4	Notice to bidders.
1-30.504-5	Total costs clause preferable.
1-30.504-6	Nonresponsive bids—uninvited progress payment condition.
1-30.505	Unusual progress payments—standards—procedure.
1-30.506	Accounting system and controls.
1-30.507	Information required.
1-30.508	Advance payments.
1-30.509	Definitions.
1-30.509-1	Progress payments.
1-30.509-2	Customary progress payments.
1-30.509-3	Unusual progress payments.
1-30.509-4	Costs.
1-30.509-5	Incurred costs.
1-30.509-6	Unliquidated progress payments.
1-30.509-7	Contract price.
1-30.509-8	Amendments, supplements, and modifications.
1-30.509-9	Deviation.
1-30.510	Contract clauses.
1-30.510-1	Total costs clause.
1-30.510-2	Direct labor and materials cost clause.
1-30.511	General instructions for progress payment clauses.
1-30.511-1	Contracting officer.
1-30.511-2	Variation in percentages.
1-30.511-3	Total cost basis—percentage other than 70 percent.
1-30.511-4	Limited cost basis—other percentages.
1-30.511-5	Cost basis less than direct labor and material costs.
1-30.511-6	Other protective provisions.
1-30.512	Progress payment liquidation.
1-30.512-1	Ordinary method.
1-30.512-2	Alternate method.
1-30.512-3	Liquidation percentages.
1-30.513	Subcontracts.
1-30.513-1	Subcontractor progress payments.
1-30.513-2	Adaptation of uniform clause for subcontracts.
1-30.514	Progress payments on subcontracts under cost-reimbursement types of prime contracts.
1-30.515	Letter contracts.
1-30.516	[Reserved]
1-30.517	Contract financing office clearance.
1-30.518	[Reserved]
1-30.519	Contractor's request.
1-30.520	Audit.
1-30.521	Administration—general.
1-30.521-1	Extent of supervision.
1-30.521-2	Use of progress payments by contractors.
1-30.522	Adjustments—retroactive price reduction—refunds.
1-30.523	Maximum unliquidated amount.
1-30.524	Suspension or reduction of payments—general.
1-30.524-1	Failure to comply with contract.
1-30.524-2	Unsatisfactory financial condition.
1-30.524-3	Excessive inventory.
1-30.524-4	Delinquency in payment of costs of performance.
1-30.524-5	Fair value of undelivered work.
1-30.524-6	Erroneous cost estimates.
1-30.525	Government title.
1-30.525-1	Loss, theft, destruction, or damage.
1-30.525-2	Government-furnished property.
1-30.525-3	Special tooling.
1-30.525-4	Termination for convenience of the Government.
1-30.525-5	Scrap—excess property.
1-30.526	Consideration for progress payments—awards.
1-30.527	Amendments to provide progress payments.
1-30.528	Consideration for amendments providing for progress payments.
1-30.529	Format 529, Contractor's request for progress payment.

Subpart 1-30.6 [Reserved]

Subpart 1-30.7—Assignment of Claims

1-30.700	Scope of subpart.
1-30.701	General.
1-30.702	Conditions governing assignment of claims.
1-30.703	Contract clause—assignment of claims.
1-30.704	Forms for assignment and notice of assignment.
1-30.705	Filing notice of assignment and the instrument of assignment.
1-30.706	Procedures upon receipt of notice of assignment and instrument of assignment.
1-30.707	Further assignments and reassignments.
1-30.708	Examination of assignment.
1-30.709	Release of assignment.
1-30.710	Transfers of businesses and corporate mergers.

AUTHORITY: The provisions of this Part 1-30 issued under sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 1-30.000 Scope of part.

(a) This part contains general contract financing policies and procedures applicable to the financing of all types of contracts for all kinds of work, supplies, and nonpersonal services (including construction) except as provided in § 1-30.500-1 or as otherwise indicated herein. The term "contract financing" as used in these regulations covers Government guaranteed loans, advance payments, partial payments, and progress payments necessary for both performance and termination purposes. Also, Subpart 1-30.7 covers the assignment of moneys due under Government contracts.

(b) The regulations in this Part 1-30 are intended to (1) state basic contract financing policy, (2) assure proper uniformity in policies and procedures, (3) provide for application of the fundamental management principle of internal check and balance, (4) insure that the need for advance or progress payments by contractors will not be treated as a handicap in awarding contracts, (5) facilitate and accelerate the making of progress payments requested by small business concerns under Government contracts, and (6) emphasize the usefulness and desirability of providing proper contract financing assistance to small business concerns.

(c) Basic authority for advance, partial, progress, or other payments under contracts for property or services is contained in Title III, section 305 of the Federal Property and Administrative Services Act of 1949, 63 Stat. 396, as amended (41 U.S.C. 255), hereafter referred to in this part as the Property Act. The Administrator of General Services authorized the heads of executive agencies to utilize the authority contained in Title III by Delegation of Authority No. 410 dated March 26, 1962, 27 F.R. 3017. This delegated authority may be utilized by agencies when there is a necessity for the extension of financial assistance in a form authorized by section 305 of the Property Act. No attempt is made in this Part 1-30 to enumerate all authorities for contract finance assistance. However, when for cogent reasons, agencies employ the authority of other applicable laws in the field of contract financing the policies and procedures of this part shall, unless inconsistent with the provisions of such authority, be applicable in order to further the objectives of consistency and uniformity of Government procurement practices. Accordingly, references made in this part to authorizing sections of the Property Act shall be deemed likewise as references to comparable authorizing sections and requirements under other applicable laws.

Subpart 1-30.1—Forms of Financing

§ 1-30.100 Scope of subpart.

This subpart states the authority for and describes the methods of contract financing by guaranteed loans, advance payments, partial payments, and progress payments.

§ 1-30.101 Guaranteed loans—authority.

(a) Under section 301(a) of the Defense Production Act of 1950, as amended (50 U.S.C. 2091), and section 301 of Executive Order No. 10480 (3 CFR, 1949-1953 Comp., p. 962), the Department of the Army, the Department of the Navy, the Department of the Air Force, the Atomic Energy Commission, the Department of Commerce, the Department of the Interior, the Department of Agriculture, and the General Services Administration are designated as "guaranteeing agencies," and authorized by section 302(a) of Executive Order No. 10480 "to guarantee in whole or in part any public or private financing institution (including any Federal Reserve Bank), by commitment to purchase, agreement to share losses, or otherwise, against loss of principal or interest on any loan * * * which may be made by such financing institution for the purpose of financing any contractor, subcontractor, or other person in connection with the performance of any contract or other operation deemed by the guaranteeing agency to be necessary to expedite production and deliveries or services under Government contracts for the procurement of materials or the performance of services for the national defense, or for the purpose of financing any contractor, subcontractor, or other person in connection with or in contemplation of the termination, in the interest of the United States, of any contract made for the national defense."

(b) As defined in section 702(d) of the Defense Production Act of 1950, as amended (50 U.S.C. 2152(d)), "the term 'national defense' means programs for military and atomic energy production or construction, military assistance to any foreign nation, stockpiling, and directly related activity."

§ 1-30.102 Guaranteed loans—description.

(a) Guaranteed loans, usually called "V-loans," are essentially the same as other loans made by financing institutions without guarantee, except that under a standard form of guarantee agreement the guaranteeing agency is obligated on demand of the lender to purchase a stated percentage of the loan and to share losses in the amount of the guaranteed percentage. Guaranteed loans afford an especially convenient medium for financing borrowers who hold subcontracts, or numerous prime contracts, or prime contracts with several contracting agencies. Funds are disbursed and collected by the lending institution, and its personnel administer the loan. Government funds are not involved except for purchases of the guaranteed portion of loans or settlement of losses.

(b) Under section 302(b) of Executive Order No. 10480, pursuant to section 301 (b) of the Defense Production Act of 1950, as amended, each Federal Reserve Bank is designated and authorized to act, on behalf of each guaranteeing agency, as fiscal agent of the United States in the making of contracts of guarantee and in otherwise carrying out the purposes of section 301 of the Defense Production Act of 1950, as amended, in respect of private financing institutions. Pursuant to Regulation V of the Board of Governors of the Federal Reserve System, any private financing institution may submit to the Federal Reserve Bank of its district an application for guarantee of a loan or credit. This application is in substantially standard form, as approved by the Board of Governors of the Federal Reserve System, after consultation with the guaranteeing agencies. Forms of application, and information and guidance concerning applications, are available at all Federal Reserve Banks.

§ 1-30.103 Advance payments—authority.

Advance payments on all contracts are authorized in accordance with the provisions of section 305 of the Property Act. When appropriate, advance payments by certain departments and agencies exercising functions in connection with the national defense are also authorized pursuant to the Act of August 28, 1958, "to authorize the making, amendment, and modification of contratcs to facilitate the national defense," (Public Law 85-804, 72 Stat. 972; 50 U.S.C. 1431-1435), and Executive Order No. 10789 of November 14, 1958 (3 CFR 1958 Supp., pp. 72-74). (See Part 1-17 of this chapter.)

§ 1-30.104 Advance payments—description.

Advance payments are advances of money, made by the Government to a contractor prior to, in anticipation of, and for the purpose of complete performance under a contract or contracts. Advance payments are made only to prime contractors. They are expected to be liquidated from payments due to the contractor incident to performance of contracts. Since they are not measured by performance, they differ from partial, progress, or other payments made because of and on the basis of performance or part performance of a contract. Advance payments may be made to prime contractors for the purpose of making subadvances to subcontractors.

§ 1-30.105 Progress payments—authority.

Progress payments are authorized in accordance with the provisions of section 305 of the Property Act.

§ 1-30.106 Progress payments—description.

The term "progress payments," as used in this part signifies payments made as work progresses under a contract, upon the basis of costs incurred, of percentage of completion accomplished, or of a particular stage of completion. As used in these regulations this term does not include payments for partial deliveries accepted by the Government under a contract, or partial payments on contract termination claims.

§ 1-30.107 [Reserved]

§ 1-30.108 Partial payments—authority.

Partial payments are authorized in accordance with the provisions of section 305 of the Property Act.

§ 1-30.109 Partial payments—description.

The term "partial payments" as used herein means payments made under a contract, upon the submission of proper invoices or vouchers, for supplies delivered and accepted or services rendered and accepted, where such supplies or services are only a part of the total contract requirement. (See § 1-8.212-1 re partial payments upon termination.)

Subpart 1-30.2—Basic Policies

§ 1-30.200 Scope of subpart.

This subpart sets forth basic policies applicable to guaranteed loans, advance payments, partial payments, and progress payments; and also deals generally with payments to contractors. Policies and procedures more particularly pertaining to advance payments and progress payments are contained in Subparts 1-30.4 and 1-30.5, respectively.

§ 1-30.201 Acceleration of payments.

Executive agencies shall take such action as is required to facilitate and accelerate the making of proper payments on all contracts when due, and shall adopt a liberal policy in making partial payments in order to assist business concerns in participating in Government procurement. This should minimize the need for contractors to request progress payments.

§ 1-30.202 Timely action.

In connection with requests for provision of progress payments, advance payments, or loan guarantees, there must be timely action, no unwarranted delay, and no hesitation to make proper contract financing provisions. Likewise, with regard to other payments to contractors, not constituting contract financing, amounts properly payable to contractor must be ascertained promptly and paid expeditiously. Responsible personnel should utilize vigorously all proper means available to them for ascertainment and payment of amounts payable to contractors as rapidly as possible.

§ 1-30.203 Supplemental agreement.

After negotiations involving agreement on an amount to be paid to a contractor, an appropriate supplemental agreement should be prepared expeditiously and executed without delay. To the greatest extent practicable, all such supplemental agreements should be limited to appropriate coverage of the matters directly related and leading to the contemplated payment by the Government; and their preparation and issuance should not be held up pending the consummation of agreements on other separate matters on which contract amendments are desired or contemplated.

§ 1-30.204 Small business.

Immediate and continuing attention must be given to insure that constructive measures will be taken to facilitate and accelerate necessary contract financing assistance to small business concerns. Every reasonable effort must be made to assist small business concerns in the resolution of their problems relative to the financing of contract performance, including any cases in which it may be reasonably necessary to increase the rate for progress payments and to assist them in understanding and complying with the requirements of performance as to payment forms, inspection and cost accounting. However, the issuance of a certificate of competency by the Small Business Administration shall not be considered as a requirement that contract financing must be provided by the procuring activity.

§ 1-30.205 Purpose of contract financing.

Contract financing is to be regarded as a useful working tool that may be used to the benefit of the Government in aiding procurement by expediting production and delivery under Government contracts. Prudent contract financing supports procurement and production and fosters the small business policy by providing necessary funds to supplement other funds available to contractors for contract performance.

§ 1-30.206 Support of procurement—minimizing monetary loss.

Financing must support procurement and should be designed to aid, not impede, essential procurement, but should be so administered as to avoid the risk of monetary loss to the Government to the extent compatible with aiding essential procurement.

§ 1-30.207 Reasonable need.

Government financing for production or services should be provided only if, and to the extent, reasonably required for prompt and efficient performance of Government contracts and subcontracts.

§ 1-30.208 Working capital purposes.

Guaranteed loans under section 301 of the Defense Production Act of 1950, as amended, are used primarily for working capital purposes and are not ordinarily used for loans for facilities expansion. However, it is not the intent of these regulations to preclude guarantees of loans for facilities expansion in appropriate circumstances. Also, guarantees may be extended in cases in which a relatively small part of the loan might be used for facilities expansion of a minor or incidental nature: *Provided*, That the borrower's financial condition is such that the facilities expansion will not delay or impair repayment of a guaranteed loan which would be granted on a commercial banking basis. Since advance payments and progress payments should be self-liquidating from contract performance, they also will not ordinarily be used to finance fixed asset acquisitions for contractor ownership.

§ 1-30.209 Order of preference.

In determining what form of financing shall be recommended or made available to suppliers, the following order or preference generally should be observed, recognizing that there may be valid exceptions in specific cases or classes of cases:

(a) Private financing on reasonable terms (without governmental guarantee)—supplemented when reasonably necessary by Government financing to the extent reasonably required;

(b) Customary progress payments, as described in § 1-30.503, including progress payments incident to "Small Business Restricted Advertising" or incident to procurement by formal advertising, as authorized herein (see § 1-30.504) except that guaranteed loans may be preferable to customary progress payments when so indicated by a contractor and financing institution; or progress payments based on percentage or stage of completion, confined to contracts for construction, alteration, or repair;

(c) Guaranteed loans (with financing institutions participating to an extent appropriate to the risk involved);

(d) All unsual progress payments, as described herein (§ 1-30.505), not including contracts involving advance payments;

(e) Advance payments (§ 1-30.408).

§ 1-30.210 Financing not a handicap.

(a) The need for advance payments or for progress payments or for a guaranteed loan (with reasonable percentage of guarantee) shall not be treated as a handicap in awarding contracts to those qualified contractors who are deemed competent and capable of satisfactory performance (see §§ 1-1.310, 1-2.407, 1-30.211, and 1-30.212). The ability of the contractor to perform the contract, including the availability of money or credit necessary for performance, must be reasonably assured in all cases. Awards which are otherwise proper must not be deterred by the necessity for providing reasonable contract financing. A contractor deemed reliable, competent, capable, and otherwise responsible, must not be regarded as any less responsible by reason of the need for reasonable contract financing provided or guaranteed by a procuring agency. Responsible personnel must endeavor to assure that full, proper and prudent use is made of contract financing, in such ways that financial difficulties will not bring about delay or failure in performance or result in monetary losses to the Government. In selection of an appropriate method for provision of funds, contractors will not be expected to seek or obtain loans or credit (1) at excessive interest rates or other exorbitant charges, or (2) from agencies of the Government other than the procurement agency.

(b) Before contract awards, contractors sometimes indicate that contract financing by guaranteed loan, progress payments or advance payments will not be required. In some of those cases, the need for such contract financing later arises, usually from changed circumstances differing from those projected at the time of the award. The fact that a contractor did not indicate before award that he would require contract financing, or that he stated that he would not require such financing, does not disqualify the contractor for proper contract financing conforming to these regulations and should not be permitted to deter such financing. Each such case should be dealt with and decided on its merits, without giving weight to the contractor's earlier error with regard to the need for contract financing.

§ 1-30.211 Financial responsibility of contractors.

Procuring activities in placing contracts shall give due regard to the financial capabilities of the supplier. Financial difficulties encountered by contractors and subcontractors may (a) disrupt production schedules, (b) cause wastage of manpower and materials, and (c) if

connected with guaranteed loans, advance payments, or progress payments, result in monetary loss to the Government. Also, if financial crises occur in the course of a contractor's production, the need for continued production may make guaranteed loans or advance payments imperative for continuance of such production, even though monetary losses may be likely under the circumstances. In order to reduce these hazards so far as possible, contracts should be entered into only with those potential contractors who meet the requirements of § 1–1.310 or § 1–2.407, and who have the financial capacity or credit (giving due regard to the availability of progress payments, guaranteed loans, and advance payments), technical skill, management competence, and plant capacity and facilities (including subcontracting capacity) reasonably to assure their ability to perform their contracts in accordance with their terms. Care should be taken also to the extent practicable to avoid the placement of additional contracts or subcontracts with contractors in situations where additional contracts will overload the contractor's production capacity, over-extend his financial resources and credit, and thus tend to interfere with timely performance of contracts on hand, and create need for additional contract financing arrangements, which may be impossible to establish on a prudent basis. In all cases, whether involving formal advertising or negotiation, it must be determined that the contractor is financially and otherwise able to perform the contract. In addition, consideration must be given to the judgment, skill, and integrity of the potential contractor, and to his reputation and experience, including prior work of a similar nature done by him, and the other factors set forth in §§ 1–1.310, 1–2.407, and 1–3.102, as appropriate. Persons placing subcontracts, at all levels of subcontracting, should be encouraged to apply these standards in placing subcontracts. Some practical examples of important points which should be kept in mind are set out in §§ 1–30.211–1 through 1–30.211–6.

§ 1–30.211–1 Small volume of work.

Unduly small volume of work, in relation to amount of overhead expense, may result in losses to such extent as to interfere with or prevent performance of contracts. The order backlog on hand and reasonably foreseeable should be sufficient to enable operations to continue at least through the contemplated term of the contracts for which contract financing is being considered.

§ 1–30.211–2 Large volume of work.

Unduly large volume of work to be performed concurrently with a contract may result in insufficiency of cash or credit to support the work, or in delays or collapse on account of inadequacy of plant space, production equipment, engineering or production personnel, or unavailability of materials, parts, or components. An apparently unduly large backlog may or may not be a deterrent, depending upon the relationship of the scheduling of all the work to the available credit, facilities, personnel, supplies, and subcontractors.

§ 1–30.211–3 Unrealistic cost estimates.

Incompetence, carelessness, or over optimism of management may cause or permit the making of bids or proposals for work involving techniques, processes or "know-how" on which the contractor has not had sufficient experience. Such work may be for the end items under a Government contract or for end items under other contracts (whether existing or prospective). In either case, unforeseen difficulties of performance and unanticipated excess of costs over contract prices may prove ruinous. In such cases, the proposed price, or cost estimates, whether or not based on past performance and experience of qualified competent contractors for the same or similar kinds of end items, may be unrealistic for the inexperienced contractor and may make the company's financial projections completely unrealistic. Comparative bids or proposals by others are important and useful factors in evaluation of the adequacy or inadequacy of proposed prices. However, a proposed price that seems unduly low may in fact be founded solidly on superior efficiency or on the discovery of new and improved techniques or processes that will enable the contractor to perform at costs substantially less than those of other contractors.

§ 1–30.211–4 Technical and engineering evaluation.

While management and technical competence must be evaluated largely on the basis of past performance of management and technical personnel, in doubtful cases financial forecasts cannot be analyzed adequately without the benefit of technical and engineering judgments based upon detailed scrutiny of the contractor's production plans and contemplated processes in relation to the quantity and quality of available facilities and personnel. However, while inexperience of the contractor in production of a contemplated end item or similar kinds of end items is a danger signal requiring close collaboration of all personnel concerned with the various elements of contract awards and contract financing, close analysis of the facts may provide sound reasons for belief that the prospective contractor, with proper and prudent contract financing assistance, will be able to perform on terms and conditions, including price, beneficial to the Government.

§ 1–30.211–5 Importance of type of contract—development.

The type of contract may constitute the dividing line for decision as to ability or inability to perform and the related question of the prudence or imprudence of providing contract financing. If the contemplated end items are essentially development items—whether or not the contract is labeled a development contract—a fixed-price type of contract, whether firm fixed-price, fix-price with escalation, or fixed-price subject to price revision with a ceiling, may prove impossible of performance within the contract price and may result in nondelivery of acceptable end items and in disaster to the contractor. Except for those contractors who are exceptionally strong financially, it is imperative in these cases that financial analysis and evalution be based upon the closest possible scrutiny by, and stated judgments of, qualified engineering and technical personnel with regard to the details and difficulties of performance and their relation to projected costs of the work.

§ 1–30.211–6 Engineering, production, and purchase plans.

Company plans may contemplate engineering costs, direct labor costs, or prices of materials, parts or components that are unduly low. Financial forecasts cannot be made intelligently or usefully without the benefit of careful and competent analysis of all significant elements of the engineering, production, and purchasing aspects—by qualified technical personnel. Such analysis would need to evaluate the company's estimated costs for each significant performance element against the probable costs to be encountered for all elements necessary for actual performance. It may, for example, be foreseeable upon analysis that the company has materially underestimated the amount of engineering and testing necessary for completion of a satisfactory preproduction model, or the quantity and quality of special tooling or other manufacturing aids that may be required for production of the end items, or the amount of direct labor that will be required, or the purchase price of necessary materials, parts or components. The company may also have been in error as to the probable technical ability of contemplated subcontractors to provide acceptable parts or components. The company may even—in some cases—be expecting to have significant portions of the work done by technically or financially irresponsible subcontractors, some of whom may be affiliated with the contractor or related financially to the contractor's ownership or management. All these elements, in appropriate cases, require analysis and evaluation by competent engineering and technical personnel and bear upon the soundness or lack of soundness of the evaluations of financial capability and of the risks of monetary losses that would be involved in contract financing.

§ 1–30.212 Coordination before contract award.

For effective application of the principles stated in § 1–30.211, each procuring activity should be staffed with or have available and use the services of persons qualified and competent to evaluate credit and financial problems. Among other things, the duties of such persons would be to arrange, prior to contract awards, and so far as practicable, prior to subcontract arrangements, that financing for performance of contemplated contracts and subcontracts is reasonably assured prior to or contemporaneously with the making of contracts. In those exceptional cases where there is substantial doubt that a prospective contractor has the financial capacity or credit resources essential to

the performance of the contemplated contract, the interested contracting officer, after having determined that no satisfactory alternative sources of supply are readily available on terms equally as favorable to the Government, should, prior to placement of the contract, consult with the appropriate contract financing office of the procuring activity to determine whether financing can prudently be arranged. In such consultation it should be resolved, if placement of the contract is deemed beneficial to the interests of the Government, whether and by what means financing should be provided.

§ 1-30.213 Financial information and analysis.

(a) The necessity for financial information and analysis, and the scope, depth, and detail of analysis of the financial capability of contractors, for contract financing purposes, must vary reasonably with the circumstances of particular cases. The extent of accumulation of data, and the evaluation thereof, must necessarily be determined by the informed judgment of competent, responsible personnel. Essentially, this process must be neither over-done nor under-done. For example, financial analysis would serve no useful purpose in connection with provision of progress payments:

(1) For contractors who are known from experience to be so strong and so competently managed as to be fairly relied upon to perform their contracts satisfactorily, or

(2) For contractors who are known to be in satisfactory financial condition and operating profitably, where the items involved are regularly produced by the contractor and the contract amounts are well within the normal sales volume of the contractor. In such cases, the financial evaluation might well consist of no more than scrutiny of readily available published balance sheets and operating statements. In doubtful cases, the financial analysis would have to be as broad, and as meticulously and painstakingly detailed, as is necessary to fit the circumstances of the case. The obtaining of information relevant to financial capability, and the analysis and proper evaluation of that data, are of particular importance where:

(i) The contractor is a new supplier to the procuring activity;

(ii) The contractor has not supplied the item or a substantially similar item to the procuring activity within the preceding 12 months;

(iii) The contractor is a newly organized concern;

(iv) The contractor is on a list requiring pre-award clearances or special clearance prior to awards;

(v) The contractor is on any current list indicating current or past contract defaults or delinquencies;

(vi) The contractor is known to be involved in performance difficulties as a supplier or subcontractor for private customers on either Government or commercial work;

(vii) The contractor is listed on the consolidated list of contractors indebted to the United States (Hold-up List);

(viii) There are any known facts or circumstances which support reasonable doubts as to the contractor's financial capability of performance.

(b) When only minimum information is reasonably necessary, such as a current balance sheet and operating statement and similar financial statements for the next preceding fiscal year, these may be either published statements, audited statements, certified statements, or any combination of those, from any convenient source.

§ 1-30.214 Appropriate information—purposes.

The kinds of information and data that may be appropriate under the circumstances of particular cases (see § 1-30.213) for adequate disclosure of the contractor's financial condition, for full understanding of the propriety and reasonable necessity for contract financing, for evaluation of the contractor's ability to perform his contracts without loss to the Government, and for informed judgment with regard to the terms, conditions and protective provisions that may be appropriate and prudent for the protection of the Government, are outlined below. It is emphasized that only those items which are appropriate to the particular case will be required.

(a) Balance sheet and profit and loss statement for the most recent fiscal year prepared and certified by an independent public accountant (including his comments, if any), and, if available, similar financial data for the two previous years; also latest available interim balance sheet and profit and loss statement of the current fiscal year; also a separate statement of amounts of defense and commercial sales. If audit reports are not available, then corresponding statements should be submitted, certified by an authorized officer, partner, or individual proprietor as truly and fully setting forth the financial condition and operating results of the applicant; also, if a proprietorship, partnership or joint venture, personal financial statements of the proprietor, partners, or members of the joint venture and description of individual liabilities of the partners or members of the joint venture on contracts of the partnership or joint venture;

(b) Summary history of the contractor and his principal management personnel, indicating particularly any past insolvencies of the contractor, or a predecessor, or of the officers, partners, or proprietors; also, a description of his products or services;

(c) Statement of all affiliates of the contractor, showing financial interests of the contractor in affiliates and of affiliates in the contractor, and also mutual officers, directors, and major stockholders or owners, and disclosing character and amount of business transactions with affiliates or with officers, directors, major stockholders or owners of the contractor, or his affiliates; also, if a corporation, a list of major stockholders, and shares held;

(d) Statement of compensation payable to each officer, partner, proprietor, and principal executive, and to each key employee receiving comparable compensation, including bonus, commission, and profit-sharing arrangements, together with similar data for the past 2 years; also past and projected dividends, unless obtained with paragraph (a) of this § 1-30.214;

(e) Schedule of principal contracts and orders on hand, showing defense orders and civilian orders separately, and showing face amounts, unfinished amounts, and unliquidated advance or progress payments, and also indicating bids outstanding and contemplated and explanation concerning contracts under negotiation;

(f) Cash forecast, showing estimated disbursements and receipts for the period or periods involved (see §§ 1-30.214-1 and 1-30.214-2);

(g) Estimated profit and loss statements and estimated balance sheets (see § 1-30.214-3);

(h) Comparison of past financial results with estimates previously furnished by the contractor;

(i) Credit agency ratings of the contractor, and, when significant, credit agency ratings of principal subcontractors and of principal business customers (defense and commercial) of the contractor;

(j) Existing and contemplated credit or financing arrangements, names of parties and relationship, if any, to contractor, amounts available or to be available, periods of availability, and required or contemplated payments, including:

(1) Loans and credits;

(2) Advances and progress payments;

(3) Projected equity capital increases;

(4) Deferred trade credit, if any;

(5) Creditor subordinations or standbys; and

(6) Mortgates, liens, pledges, assignments, conditional sales, lease-purchases, hypothecations, and other encumbrances or security arrangements, both existing and contemplated.

(k) Status of all tax accounts, particularly Federal income, excise, and withholding taxes, and social security taxes or contributions (including verification with Internal Revenue Service, when appropriate) with special attention to the matter of Federal tax delinquencies (which are covered by the lien and right of distraint and levy provided by sections 6321 and 6331 of the Internal Revenue Code);

(l) Appropriate information, explanation and schedules to indicate:

(1) Leases, deferred purchase arrangements, and patent or royalty arrangements, outlining terms and showing relationship, if any, of other parties to the contractor;

(2) Insurance maintained and to be maintained;

(3) Contemplated capital expenditures, debt reduction or retirement, and acquisitions of capital stock;

(4) Delinquencies on contracts, subcontracts, or purchase orders, and status thereof;

(5) Pending or anticipated liability for contract price refunds, or for rene-

gotiation, or for other Government claims;

(6) Anticipated losses on contracts;

(7) Contingent liabilities, including those on endorsements, guarantees, warranties, surety bonds, and material litigation pending or threatened;

(8) Aging and collectibility of accounts and notes receivable, status of disputed receivables, identification of any amounts included in receivables but not currently due and payable;

(9) Obsolescence of inventory and method of valuing inventory;

(10) Aging of accounts and notes payable, identifying major creditors and interest rates and other charges, if any, and status of significant disputed items;

(11) Adequacy of reserves for depreciation;

(12) Analysis of surplus.

(m) Significant ratios such as:

(1) Inventory to annual sales;

(2) Inventory to current assets;

(3) Liquid assets to current assets;

(4) Liquid assets to current liabilities;

(5) Current assets to current liabilities; and

(6) Net worth to debt.

(n) Comments and opinion of pertinent audit activity concerning contractor's accounting system and controls, and available audit activity analysis of important elements of financial statements or projections;

(o) Other facts that may be appropriate for the purposes stated at the beginning of this § 1–30.214. (See §§ 1–30.211–1 to 1–30.211–6, inclusive.)

§ 1–30.214–1 Cash flow forecast, and estimated financial statements.

In doubtful cases, an estimated cash budget (Cash Flow Forecast) and related estimated Profit and Loss Statements and estimated Balance Sheets prepared by the contractor, will be very useful for the purpose of arriving at an informed judgment as to the cash requirements (both for the contract and for the contractor's other activities), cash receipts for the contract period, and cash or credit needed to supply any excess of projected expenditures over projected receipts. When considered useful or necessary, such estimates should be requested from the prospective contractor, analyzed by financial personnel, and discussed to the extent necessary or appropriate with the prospective contractor. Many contractors will have such projections readily available, perhaps not including estimated balance sheets. The failure of the contractor to have prepared such estimates, or resistance to their preparation, or difficulties and delays in preparation, or poor quality of the projections, or the use of unreasonable or unrealistic assumptions in their preparation, may well constitute warning signals that the company's planning has been insufficient and that significant financial troubles may be encountered during the contemplated period of contract performance.

§ 1–30.214–2 Realistic assumptions.

Cash forecasts can, of course, be no more reliable and representative of probable financial developments than the assumptions on which these forecasts are based. Each cash forecast and related projection should disclose the important underlying assumptions. The more important of these assumptions are:

(a) Estimated amounts and timing of purchases of materials, parts, components, subassemblies, services, and payments therefor;

(b) Estimated amounts and timing of purchases of machinery and equipment, other production or test facilities, other fixed assets, and purchases or production of special tooling, and payments therefor;

(c) Schedule of fixed cash charges, such as debt installments, interest, rentals, and taxes;

(d) Projected manufacturing and production schedules;

(e) Projected shipments, or delivery acceptances;

(f) Estimated amounts and timing of billings to customers (including progress payments), and customer payments;

(g) Estimated amounts and timing of cash receipts from lenders or other credit sources, and liquidation of loans; and

(h) Estimated amounts and timing of cash receipts from other sources. The assumptions underlying cash forecasts should be checked, as may be prudent in the circumstances of the case, for reasonableness and realism. This checking should be done with the contractor, with Government personnel responsible in the areas of engineering, production scheduling, cost and price analysis, and with others (including prospective supply, subcontract, and loan or credit sources).

§ 1–30.214–3 Estimated profit and loss statements and balance sheets.

The cash budget or cash forecast does not show anticipated profit or loss, and is limited to the forecast of movements within a company's cash account. The concurrent submission of an estimated profit and loss statement covering the same period serves to tie in the anticipated cash transactions with the estimated sales and expense activity, and culminates in the estimated balance sheet position. The estimated profit and loss statement also can serve as a guide for evaluating the company's projections with respect to sales volume, cost of goods sold, gross profit and net profit in relation to the known results of past performance. The interrelationship between the cash budget, estimated profit and loss statement and estimated balance sheet, covering a given period, is illustrated by the suggested formats appearing in § 1–30.218 for use in financial projections.

§ 1–30.215 Termination financing.

It is recognized that adequate protection against the financial impact of termination of Government contracts and subcontracts will tend to encourage contractors to invest their own funds in performance under such contracts. Accordingly, termination financing may be made available, with appropriate protection of the Government's interest, either in connection with or independently of performance financing (see § 1–8.212–1 regarding partial payments upon termination).

§ 1–30.216 Report of adverse developments—prompt decisions.

When materially adverse developments concerning a borrower having a guaranteed loan, or concerning a contractor having advance payments or progress payments, become known to a procuring activity, pertinent facts, including information as to remedial or protective action taken or proposed, should be furnished by the procuring activity to the appropriate financing activity so that timely appropriate protective or remedial action may be taken by coordinated action of all concerned. However, the furnishing of such information does not relieve the personnel responsible for administration of the contract from taking such action as is deemed proper, prudent, and beneficial to the Government. When there are reasons to doubt the prudence of continuing progress payments or advance payments in cases involving performance difficulties or financial deterioration, decision must be made promptly and with proper regard to the harmful effects of delay on the continued operation of the contractors concerned.

§ 1–30.217 [Reserved]

§ 1–30.218 [Reserved]

§ 1–30.219 [Reserved]

§ 1–30.220 Foreign procurement.

This Part 1–30 applies equally to domestic and foreign procurement, with the exceptions and qualifications stated below. The enforceability of a contract provision in a foreign jurisdiction is dependent on local law and procedure. It may sometimes become necessary to take action in foreign countries to enforce collateral security or other contract financing protective provisions, or to recover property pursuant to a progress payment clause, and to collect contract financing indebtedness. In such cases, the nature and extent of remedies available for enforcement of contract provisions is necessarily determined by the laws, rules, and procedures of the country in which the relief is sought.

§ 1–30.220–1 Progress payments on contracts for foreign performance.

When progress payments are contemplated for contracts to be performed wholly or partly in a foreign country, appropriate legal advice should be obtained with respect to the validity, enforceability, and effectiveness of the contemplated progress payment clause (see §§ 1–30.510–1, 1–30.510–2, and 1–30.511) and of any proposed guarantees, pledges, or other special protective arrangements, within the foreign country involved. Such legal advice should also cover the need, if any, for additional protective provisions (§ 1–30.511–6) or for deviations (§ 1–30.509–9) from the uniform clauses, that may be required to comply with the applicable foreign law and to provide for the most effective protection and enforcement of the interests of the United States.

§ 1–30.220–2 Advance payments on contracts for foreign performance.

When advance payments are proposed for contracts to be performed wholly or partly in a foreign country, the recommendation for advance payments (see § 1–30.412) should include appropriate legal advice as referred to in § 1–30.220–1. When advance payments are proposed to be made on contracts with foreign governments, it is expected that the advance payment arrangement, if approved, would not include provisions generally unsuitable for government-to-government agreements, such as those for special bank accounts, unilateral withdrawal of funds, liens, insurance, additional security, or representations, warranties and covenants of the kinds set forth in §§ 1–30.414–2(p) and 1–30.414–2(r). It is recognized that advance payments to foreign governments, when authorized, will need to be adapted to the special circumstances of each case to provide appropriate protection in the light of the relationship of the United States to each affected foreign government and with due recognition of the sovereign status of the contracting parties.

§ 1–30.220–3 Guaranteed loans for foreign contract performance.

When contracts or subcontracts are to be performed in a foreign country, financing by means of guaranteed loans seldom will be practicable because of difficulties of loan administration and enforcement. When loans are to be utilized for financing of such contracts or subcontracts, it is considered generally preferable that the loans be provided within the internal financial system of the foreign country concerned, without the guarantee of the procuring agency.

§ 1–30.221 Formats suggested for financial projections.

§ 1–30.221–1 Format 221–1, Projection of financial statements.

		1st mo.	2d mo.	3d mo.	Totals
PROFIT AND LOSS PROJECTION					
Net sales		123			
Materials used		42			
Direct labor		31			
Manufacturing expenditures		32			
Cost of goods sold		105			
Gross profit		18			
G & A expenditures		10			
Operating profit		8			
Income tax provision		4			
Net profit		4			
* * *		* * *	* * *	* * *	* * *
CASH PROJECTION					
Cash balance (opening)		78			
Receivable collections		112			
Progress payments received		30			
Bank loan proceeds		100			
Total proceeds		320			
Trade payables paid		76			
Direct labor paid		31			
Manufacturing expenditures paid		35			
G & A expenditures paid		9			
Payment on long term debt		2			
Fixed asset addition		4			
Income taxes paid		11			
Progress payments repaid		24			
Bank loan repayment		66			
Total disbursements		258			
Cash balance (closing)		62			
* * *	* * *	* * *	* * *	* * *	* * *
BALANCE SHEET PROJECTION					
Assets	Beginning				
Cash	78	62			
Receivables	188	199			
Inventory	306	308			
Current assets	572	569			
Fixed assets (net)	53	56			
Deferred charges	27	25			
Total assets	652	650			
Liabilities					
Notes payable—Banks	150	184			
Progress payments outstanding	56	62			
Trade payables	102	71			
Income tax	45	38			
Accruals	30	24			
Current liabilities	383	379			
Long term debt	62	60			
Capital stock	153	153			
Surplus	54	58			
Total liabilities and net worth	652	650			
Working capital	189	190			

§ 1–30.221–2 Format 221–2, Interrelationship of projection of financial statements.

	Balance sheet (beginning)	Cash flow		Profit and loss		Balance sheet (ending)	Net changes
		DR	CR	DR	CR		
Assets:							
Cash	78		16			62	(16)
Receivables	188		112	123		199	11
Inventory	306			Purchases 45 Dir. Labor & Mfg. Exp. Incurred 62	42 Mat. Used 31 Dir. Labor 32 Mfg. Exp Applied	308	2
Current assets	572		128	230	105	569	(3)
Fixed assets	53	4			1 Depr. (G & A)	56	3
Deferred charges	27				2 G & A Exp	25	(2)
Total assets	652	4	128	230	108	650	(2)
Liabilities:							
Notes payable—Banks	150	66	100			184	34
Progress payments	56	24	30			62	6
Trade payables	102	76			45 Purchases	71	(31)
Income tax	45	11			4	38	(7)
Accruals	30	Paid: Dir. Labor 31; Mfg. Exp 35; G & A Exp 9			62 Dir. Labor & Mfg. Exp. Incurred 7 G & A Exp	24	(6)
Current liabilities	383	252	130		118	379	(4)
Long term debt	62	2				60	(2)
Capital stock	153					153	
Surplus	54				4	58	4
Total liabilities and net worth	652	254	130		122	650	(2)

Subpart 1-30.3 [Reserved]

Subpart 1-30.4—Advance Payments

§ 1-30.400 Scope of subpart.

(a) This subpart covers policies and procedures for advance payments on prime contracts, including advance payments on subcontracts under all types of prime contracts. It applies to all advance payments hereafter authorized pursuant to any legislation or other authority, except as provided in § 1-30.419. It is to be applied in conformity to the policies stated in Subpart 1-30.2.

(b) The policies, standards and procedures of this subpart 1-30.4 are applicable to advance payments to subcontractors under all prime contracts, including fixed-price types and cost-reimbursement types of prime contracts. For the prime contractor to receive advances to, in turn, advance to subcontractors, or in order for the prime contractor to be reimbursed for advances to the subcontractor, it is required that the prime contract make provision for advance payments conforming to the regulations in this part, with appropriate provision for advance payments by the prime contractor to subcontractors or suppliers (see § 1-30.414-2(q)).

§ 1-30.401 Types of contracts that may have advance payments.

Advance payments may be made on any approved type of contract.

§ 1-30.402 Advance payments in addition to progress or partial payments.

Where necessary and in accordance with this Part 1-30, advance payments may be authorized in addition to progress or partial payments on the same contract (see § 1-30.508).

§ 1-30.403 Interest.

(a) Interest will be charged on the unliquidated balance of all advance payments at a rate to be fixed by the head of the agency for advance payments to be made by procuring activities under his cognizance, except that advance payments may be approved without interest when in connection with nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, or on contracts solely for the management and operation of Government-owned plants, or, in other classes of cases when specifically authorized by agency procedure. In fixing the rate consideration should be given to commercial and governmental rates of interest then prevailing on obligations of comparable maturity and the cost of borrowed money to the U.S. Treasury. In this connection, contracts for acquisition of facilities at cost, for Government ownership, in combination with or in contemplation of supply contracts or subcontracts, will be treated as ordinary profit contracts requiring interest on advance payments.

(b) Contracts with interest-free advance payments, should provide that the contractor will charge interest (at the rate fixed by the agency head for advance payments) on subadvances or down payments to subcontractors, and that interest charged on such subadvances or down payments will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research, or development work.

(c) Interest on advance payments will not be allowed as a cost under any cost-reimbursement type contract nor cost-reimbursement subcontract thereunder, and no such contract or subcontract may provide or be amended to provide for allowance of such interest as an item of cost.

§ 1-30.404 Standards—amounts—need.

(a) Advance payments should be used sparingly and care should be taken to see that advances outstanding are sufficient for but do not exceed the actual reasonable rquirements for the contract. The amount of the advance payment in any case should be based upon an analysis of the cash flow required under the contract, and as a general rule should not exceed the interim cash needs arising during the reimbursement cycle.

(b) Generally, except for (1) nonprofit contracts with nonprofit educational or research institutions for experimental, research and development work, and (2) contracts solely for the management and operation of Government-owned plants, advance payments should not be authorized unless no other means of adequate financing is available to the contractor (not including loans or credit (i) at excessive interest rates or other exorbitant charges, or (ii) from other agencies of the Government), and the amount of the authorization is predicated upon use of the contractor's own working capital to the extent possible.

§ 1-30.405 Statutory requirements.

The statutes authorizing advance payments apply equally to negotiated contracts and contracts awarded or to be awarded by formal advertising. Accordingly, advance payments under either method of contracting may be made only upon the following conditions:

(a) The contractor shall give adequate security (see § 1-30.413);

(b) The advance payments shall not exceed the unpaid contract price;

(c) A determination shall be made by the agency head, or his authorized delegatee (see § 1-30.406), that the making of the advance payment is in the public interest when the action is pursuant to the authority of section 305 of the Property Act or 10 U.S.C. 2307, and such determination shall be based upon written findings (see § 1-30.410); or

(d) A determination shall be made by the agency head, or his authorized delegatee (see §§ 1-30.406 and 1-17.301), that the making of the advance payment will facilitate the national defense when the action is pursuant to the Act of August 28, 1958, Public Law 85-804 (50 U.S.C. 1431-1435), hereinafter referred to in this Part 1-30 as "the Act," and Executive Order No. 10789 (see Part 1-17) and such determination shall be based upon written findings (see § 1-30.410).

§ 1-30.406 Responsibility — delegation of authority.

The authority to make advance payments under section 305 of the Property Act was delegated by the Administrator of General Services to the Heads of Executive Agencies in Delegation of Authority No. 410, entitled "Authority to Use Title III of the Federal Property and Administrative Services Act of 1949" (27 F.R. 3017). This delegation authorized redelegation of the subject authority by the head of the executive agency concerned to any officer or employee of the agency and directed that the authority be exercised in accordance with the policies and procedures prescribed by the Administrator of General Services. Due to agency variations in organizational structure and nomenclature it is not practical nor desirable to specify the precise level to which redelegation should be limited, however, each Federal agency utilizing the Property Act or other authority for advance payments should provide by agency procedure that:

(a) The responsibility and authority for making findings and determinations with respect to advance payments, and in each case for approval of contract provisions for advance payments, or for approval of the terms and conditions thereof (see § 1-30.410), shall be exercised at an organizational level sufficiently high to assure uniform application of the policies set forth in this Part 1-30; and

(b) Prior to committing the Government to make an advance payment the approving agency official shall obtain the advice and concurrence of the head (or an authorized alternate) of the activity which is required to provide contract finance advice and assistance to the procuring activity.

§ 1-30.407 The Act of August 28, 1958, Public Law 85-804—Formally advertised contracts.

(a) Pursuant to the Act of August 28, 1958, Public Law 85-804 (50 U.S.C. 1431-1435), hereinafter referred to in this § 1-30.407 as "the Act," and Executive Order No. 10789 of November 14, 1958 (3 CFR 1958, Supp., pp. 72-74), as amended by Executive Order No. 11051 of October 2, 1962, hereinafter referred to in this § 1-30.407 as "the Executive order," certain agencies (see § 1-17.502) are authorized to make advance payments under contracts heretofore or hereafter made, without regard to other provisions of law relating to contracts, including advance payments under contracts awarded on competitive bids after formal advertising, and to amend such contracts to provide for advance payments, whenever the national defense will be facilitated thereby.

(b) Pursuant to the Act and the Executive order (as well as section 305 of the Property Act and other authority) and subject to these regulations, advance payments may be granted at or after awards of contracts made on competitive bids after formal advertising (as well as on negotiated contracts) notwithstanding the absence of provision for or with regard to advance payments in the invitations for bids. Bids shall be rejected if they are conditioned, quali-

fied, or limited in such way that binding awards can be made only with provision for advance payments. Bids shall not be treated as nonresponsive because they contain, or are accompanied by or supplemented by a request for advance payments or other indication that advance payments are desired or needed, so long as the advance payment aspect is not a condition, qualification, or limitation of the bid. In the cases mentioned in the previous sentence, or if the need for advance payments becomes apparent in the course of inquiry as to whether the necessary funds will be available for performance by the prospective contractor, (1) the award may be made with provision for advance payments, in conformity with this Part 1–30, or (2) the award may be made without provision for advance payments if the prospective contractor is determined to be a responsible contractor and advance payments are considered not necessary, or (3) the award may be denied because funds for performance are not otherwise available to the prospective contractor and the making of advance payments has been declined in accordance with this Part 1–30.

§ 1–30.407–1 Special contract provisions.

All contracts providing for advance payments under the authority of the Act and the Executive order shall:

(a) Make reference to the Act and the Executive order; and

(b) Include appropriate clauses required by the Act and the Executive order, or by other applicable regulations.

§ 1–30.407–2 Data.

Complete data shall be maintained by each executive agency as to all contracts and amendments to contracts relating to advance payments made pursuant to the Act and the Executive order.

§ 1–30.408 Uses of advance payments.

Advance payments are last in the general order of preferences stated in § 1–30.209. Subject to the provisions of this Part 1–30, advance payments are considered useful and appropriate for (a) nonprofit contracts with nonprofit educational or research institutions for experimental research and development work (see § 1–30.404), (b) contracts solely for the management and operation of Government-owned plants (see § 1–30.404), (c) contracts for acquisition of facilities at cost, for Government ownership, (d) contracts involving operations so remote from a financial institution that the financing institution could not be expected to provide suitable administration of a guaranteed loan, (e) contracts of such highly classified nature that the agency considers it undesirable for national security to permit assignment of claims under the contract, (f) rare but essential contracts of those contractors, unusually weak or overextended financially in those cases in which performance may be better fostered and risks of financial loss most effectively minimized by very close control of funds and supervision of performance by personnel of the agency concerned, (g) contracts for the financing of which a financing institution will not (1) assume a reasonable portion of the risks under a guaranteed loan, or (2) provide funds except at excessive interest rates or other exorbitant charges, and (h) exceptional cases in which the utilization of advance payments will be more beneficial to the interests of the Government than any other available method of financing. Circumstances will occur, especially on contracts with small business concerns, in which advance payments will be more beneficial to the interests of the Government and more suitable to the situation of the contractor than other methods of contract financing. If, incident to a bid or proposal, or after award of a contract, an otherwise qualified contractor is found to require advance payments, there should be no hesitation in recommending to approving authority that advance payments be established.

§ 1–30.409 Standards for advance payment determinations.

It is not required for the granting of advance payments that the contractor be the sole or only source or prospective source for the required supplies or services. Important practical factors include comparative prices, urgency of supply shedules, and the time and expense involved in arranging other sources or in reletting contracts. The governing principles and standards for decision as to whether to make or approve the necessary determinations for advance payments are those set forth in this § 1–30.409 and §§ 1–30.202 through 1–30.212, and 1–30.404 through 1–30.408. Affirmative recommendations should be made in favor of granting advance payments when (a) advance payments are necessary to supplement other funds or credit available to a contractor or prospective contractor, (b) the contractor or prospective contractor is otherwise qualified as a responsible contractor (see §§ 1–1.310 and 1–30.211), (c) there will be a benefit to the Government from performance prospects or other practical advantages, and (d) the case is within one or more of the categories described in § 1–30.408. These recommendations should be approved unless the responsible contract financing office (see § 1–30.212), or other authorized official concerned (see § 1–30.406), considers that under all the relevant circumstances the making of advance payments would be unreasonable or imprudent or would involve undue risks of monetary loss to the Government, or would otherwise fail to conform to this Part 1–30.

§ 1–30.410 Findings, determinations, and authorization.

Each determination required by § 1–30.405 shall be based on written findings made by the official making such determination, which findings shall be final and shall be available for a period of at least 6 years following the date of the determination. A copy of the findings shall be filed with the General Accounting Office copy of the contract to which it applies. The following is a suggested form and text of findings, determinations, and authorization for use in establishing advance payments.

FINDINGS, DETERMINATIONS, AND AUTHORIZATION FOR ADVANCE PAYMENTS

FINDINGS

1. I hereby find that:

a. The _____ and _____ (Procuring activity) (Contractor) have entered (propose to enter) into negotiated (formally advertised) Contract No. _____, (dated _____).

[Summary of the specific facts and significant circumstances concerning the contract and the contractor, which, together with the other findings, will clearly support the determinations below.]

b. Advance payments (in an amount not to exceed $ _____ at any time outstanding) (in aggregate amount not exceeding $ _____, less the aggregate amounts repaid, or withdrawn by the Government) are required by the contractor in order to perform under the contract. Such amount does not exceed the unpaid contract price, nor the estimated interim cash needs arising during the reimbursement cycle.

c. The advance payments are necessary for prompt and efficient performance of the contract, which will be of benefit to the Government.

d. The proposed advance payment clause contains appropriate provisions for the protection of the Government, as security for the advance payments. These include provision that all payments will be deposited in a special bank account, and that the United States will have a paramount lien upon (1) the credit balance in the special bank account, (2) any supplies contracted for, and (3) any material or other property acquired for performance of the contract. (Advance payment bond is required.) Such security is deemed to be adequate.

e. Within the meaning of applicable regulations, no means of adequate financing other than by advance payments are available to the contractor, and the amount designated above is predicated upon the use of the contractor's own working capital to the extent possible in performing the contract.

f. The contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (,) (research and development) work, without profit to the contractor.

g. The contract is solely for the management and operation of a Government-owned plant.

h. The following unusual facts and circumstances favor the making of advance payments to the contractor without interest:

[Recitation of pertinent facts and circumstances]

DETERMINATIONS

2. Upon the basis of the foregoing findings, I hereby determine that the making of the proposed advance payments with interest at the rate of __ percent per annum on the unliquidated balance of such advance payments (without interest except as provided by the proposed advance payment clause) (is in the public interest) (will facilitate the national defense).

AUTHORIZATION

Such advance payments, of which (the amount at any time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed $_____, are hereby authorized pursuant to section 305 of the Federal Property and Administrative Services Act of 1949, as amended (or 10 U.S.C. 2307) (or the Act of August 28, 1958, Public Law 85–804, 72 Stat. 972, and Executive Order No. 10789) (or if other, cite appropriate authority) upon (terms and conditions substantially as contained in the

proposed advance payment clause of which copy (or outline) is annexed hereto) (the following terms and conditions:)

All prior advance payment authorizations with respect to Contract No. ------ are hereby superseded.)

(Name typed)

(Title of authorized official)

NOTES:

1. Words and expressions in parentheses and blank spaces in the above paragraphs indicate choices of language, depending upon the facts pertinent to a particular request. Only those paragraphs and those words (including the appropriate statutory reference) which are pertinent to the particular request should be included.

2. Each "Findings, Determinations, and Authorization" must include paragraphs 1a, 1b, 1c, 1d, 2, and 3. Paragraph 1e should not be included in the case of nonprofit contracts with a nonprofit educational or research institution for experimental, research and developmental work, or in the case of contracts solely for the management and operation of Government-owned plants. Paragraph 1f, 1g, or 1h, as appropriate, should be included if the advance payments are to be made without interest to the contractor. The last sentence of paragraph 3 should be included if any advance payments have previously been authorized for the contract.

3. Modifications to adapt to special facts and circumstances are permissible.

§ 1-30.411 Application for advance payment.

The contractor's application for advance payment, whether incident to the making of a contract or by way of amendment or supplemental agreement for advance payments under an existing contract, may be in the form of a letter request or other writing. The application should refer to the contract or proposed contract under which advance payments are requested, and should include or be accompanied or supported by:

(a) Cash flow forecast (see §§ 1-30.214 (f), 1-30.214-1 and 1-30.214-2) (limited to estimated cash flow for the contract or contracts to be financed by advance payments when the contracts are of the kinds mentioned in §§ 1-30.408(a) or 1-30.408(b));

(b) Proposed amount of advance payments;

(c) Name and address of bank suggested as depository for the advance payment special account;

(d) Except for contracts mentioned in §§ 1-30.408(a) and 1-30.408(b), description of efforts made to obtain private financing, including guaranteed loan if the contracts are for the national defense; and

(e) Such other information and data as may be appropriate under the circumstances of the case for the purposes outlined in § 1-30.214 (of which, ordinarily, information concerning reliability, technical capability, and adequacy of accounting system and controls should be sufficient for contracts mentioned in §§ 1-30.408(a) and 1-30.408(b).

§ 1-30.412 Action by contracting officer.

After such investigation as may be appropriate, and analysis of the application and information submitted by the contractor with his request, the contracting officer should transmit the request to the appropriate approving authority for his procuring activity (see § 1-30.406), with supporting data and recommendations which shall include:

(a) Date and identification of the approval of the award, citation of the appropriation available, type of contract, dollar amount of contract, the items to be supplied, and schedule of deliveries or performance, status of performance and deliveries, if any, contemplated profit or fee, and a copy of the contract, if available;

(b) The request and information furnished by the contractor;

(c) Report of investigation, including past dealings with the contractor, and comment on the character and responsibility of the contractor, technical ability, and plant capacity;

(d) Comment on (1) the need for the advance payments for performance of the contract, and (2) the benefits to the Government from the contemplated contract performance;

(e) Proposed advance payment contract provisions or supplemental agreement (contract modification, see § 1-1.219), including proposed security provisions (unless those are to be provided by the contract financing organization);

(f) The appropriate findings, determination and authorization (see § 1-30.410) for signature by the approving authority (unless those are to be provided by the contract financing organization);

(g) Recommendation for approval or disapproval of the advance payment request; and

(h) Justification of the proposal, if any, for waiver of interest charge (see § 1-30.403).

§ 1-30.413 Security — supervision — covenants.

(a) Except as provided in paragraph (b) of this § 1-30.413, the advance payment agreement, under any applicable statute, shall provide for deposit of all payments into special bank accounts (see § 1-30.414-1) and shall include suitable covenants (see § 1-30.414-2) to protect the Government's interest. Advance payments under such authorizations should be limited to the Contractor's financial needs, and withdrawals from the special bank accounts provided therefor should be closely supervised. The terms governing advance payments should include as security, in addition to or in lieu of the requirements for an advance payment bond or other security, provision for a lien in favor of the Government, paramount to all other liens, upon the supplies contracted for, upon the credit balance in any special account in which such payments may be deposited, and upon the material and other property acquired for performance of the contract, except to the extent that the Government has valid title thereto. Because of the variations in circumstances of individual cases, no fixed rule can be prescribed for determining adequacy of security in a particular case. The minimum security will be that required by the provisions of approved contract forms, supplemented by such further provisions and arrangements, if any, as may be considered appropriate for the protection of the Government under the circumstances of each case. Advance payment bonds usually will not be required. When, and to the extent deemed necessary and appropriate, special security provisions will be required, such as, for example, personal or corporate endorsements or guarantees, pledges of collateral, subordination or standby of other indebtedness, and controls or limitations on profit distributions, salaries, bonuses or commissions, rentals and royalties, capital expenditures, creation of liens, debt retirement or stock retirement, and creation of additional obligations.

(b) Agreements for advance payments to be made to an instrumentality of the U.S. Government, to a State, or to an agency or instrumentality of a State or local government thereof, are not required to provide for deposit of the advances into a special bank account if the official approving the advance determines that adequate security otherwise exists for the protection of the Government's interest. Where agency procedures provide for the use by a cost-type contractor of Federal funds (without the contractor's acquiring title thereto) deposited in a contractor's bank account and for the security of such deposit of public moneys in accordance with governing regulations of the Treasury Department, the provisions of §§ 1-30.413 and 1-30.414-1 will not apply.

§ 1-30.414 Agreement for special bank account and contract provisions.

This section sets forth the form of agreement for the required special bank account for deposit of the advance payments, and contract provisions for advance payments for inclusion in contracts or supplemental agreements (contract modifications). Variations from the suggested forms of contract or supplemental agreement provisions should be made only when necessary in the circumstances. For example, there may be exceptional circumstances in which it will be beneficial to the Government to modify § 1-30.414-1(b) and the second sentence of § 1-30.414-2(g).

§ 1-30.414-1 Form of agreement for special bank account.

For all advance payments substantially the following form of agreement will be used for the special bank account or accounts:

AGREEMENT FOR SPECIAL BANK ACCOUNT

Agreement entered into this ------ day of----------, 19--, between the United States of America, hereinafter called the Government, represented by the Contracting Officer executing this Agreement, ----------, a corporation under the laws of the State of ----------, hereinafter called the Contractor, and ----------, a banking corporation under the laws of ----------, located at ----------, hereinafter called the Bank.

RECITALS

(a) Under date of ----------, 19--, the Government and the Contractor entered into Contract(s) No. ------, or a Supplemental

Agreement thereto, providing for the making of advance payments to the Contractor. Copy of such advance payment provisions has been furnished to the Bank.

(b) Said Contract or Supplemental Agreement requires that amounts advanced to the Contractor thereunder be deposited in a Special Bank Account or accounts at a member bank or banks of the Federal Reserve System or any "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935; 49 Stat. 684, as amended; 12 U.S.C. 264), separate from the Contractor's general or other funds; and, the Bank being such a bank, the parties are agreeable to so depositing said amounts with the Bank.

(c) This Special Bank Account shall be designated "----------,
(Name of contractor)
----------Special Bank Account."
(Department)

COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, it is agreed that:

(1) The Government shall have a lien upon the credit balance in said account to secure the repayment of all advance payments made to the Contractor, which lien shall be superior to any lien or claim of the Bank with respect to such account.

(2) The Bank will be bound by the provisions of said contract or contracts relating to the deposit and withdrawal of funds in the above Special Bank Account, but shall not be responsible for the application of funds withdrawn from said account. After receipt by the Bank of written directions from the Contracting Officer, or from the Administering Office designated in the advance payment contract mentioned above, or from the duly authorized representative of the Contracting Officer or the Administering Office, the Bank shall act thereon and shall be under no liability to any party hereto for any action taken in accordance with the said written directions. Any written directions received by the Bank through the Contracting Officer upon ----------
(Name of agency or department)
stationery and purporting to be signed by, or by the direction of ----------
or his duly authorized representative, shall insofar as the rights, duties and liabilities of the Bank are concerned, be conclusively deemed to have been properly issued and filed with the Bank by the----------
(Name of agency or department)

(3) The Government, or its authorized representatives, shall have access to the books and records maintained by the Bank with respect to such Special Bank Account at all reasonable times and for all reasonable purposes, including (but without limiting the generality thereof) the inspection or copying of such books and records and any and all memoranda, checks, correspondence or documents appertaining thereto. Such books and records shall be preserved by the Bank for a period of six (6) years after the closing of this Special Bank Account.

(4) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account, the Bank will promptly notify ----------.
(Administering Office)

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed as of the day and year first above written.

(Signatures and official titles)

§ 1–30.414–2 Contract provisions for advance payments.

Suggested contract provisions for advance payments, with directions for use where appropriate, follow:

(a) *Amount of advance.* At the request of the Contractor, and subject to the conditions hereinafter set forth, the Government shall make an advance payment, or advance payments from time to time, to the Contractor. No advance payment shall be made (1) without the approval of the office administering advance payments (hereinafter called the "Administering Office" and designated in paragraph (n)(4) hereof) as to the financial necessity therefor; (2) in an amount which together with all advance payments theretofore made, shall exceed the amount stated in paragraph (n)(1) hereof; and (3) without a properly certified invoice or invoices.

(b) *Special bank account.* Until all advance payments made hereunder, and interest charges, are liquidated and the Administering Office approves in writing the release of any funds due and payable to the Contractor, all advance payments and all other payments under the contract shall be made by check payable to the Contractor and be marked for deposit only in a Special Bank Account with the bank designated in paragraph (n)(2) hereof. No part of the funds in the Special Bank Account shall be mingled with other funds of the Contractor prior to withdrawal thereof from the Special Bank Account as hereinafter provided. Except as hereinafter provided, each withdrawal shall be made only by check of the Contractor countersigned on behalf of the Government by the Contracting Officer, or such other person or persons as he may designate in writing (hereinafter called the "Countersigning Agent").

[When the countersignature requirement is considered not reasonably necessary for the protection of the Government (as in the case of contractors who are financially strong, with good performance records and good past experience with regard to contract cost disallowances), and it is desired to waive the requirement, the following sentence may be added to paragraph (b)]:

Until otherwise determined by the Administering Office, countersignature on behalf of the Government will not be required.

(c) *Use of funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for direct materials, direct labor, and administrative and overhead expenses required for the purposes of this contract (including, without limitation, payments incident to termination for the convenience of the Government) and properly allocable thereto in accordance with generally accepted accounting principles (subject to any applicable provision of contract cost principles and procedures in FPR Part 1–15 or other agency cost principles and procedures which are made part of this contract), or for the purposes of reimbursing the Contractor for such payments, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

[The following paragraph is for use in cost-reimbursement contracts, instead of the paragraph (c) above.]

(c) *Use of funds.* The funds in the Special Bank Account may be withdrawn by the Contractor solely for the purposes of making payments for items of allowable cost as defined in Article ------ of this contract, or to reimburse the Contractor for such items of allowable cost, and for such other purposes as the Administering Office may approve in writing. Any interpretation required as to the proper use of funds shall be made in writing by the Administering Office.

(d) *Return of funds.* The Contractor may at any time repay all or any part of the funds advanced hereunder. Whenever so requested in writing by the Administering Office, the Contractor shall repay to the Government such part of the unliquidated balance of advance payments as shall in the opinion of the Administering Office be in excess of current requirements, or (when added to total advances previously made and liquidated) in excess of the amount specified in paragraph (n)(1) hereof. In the event the Contractor fails to repay such part of the unliquidated balance of advance payments when so requested by the Administering Office, all or any part thereof may be withdrawn from the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agent and applied in reduction of advance payments then outstanding hereunder.

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advace payments and interest charges are equal to (-- percent) of the stated contract price of $------, or such lesser amount of which the contract price may have been reduced, plus (1) increases, if any (not resulting from any provisions for price redetermination or escalation), in the above stated contract price not exceeding, in the aggregate $------ (insert here not more than 10 percent of stated contract price above), and (2) all increases in contract price resulting from any provision for price redetermination or escalation, the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges until such advance payments and interest charges shall have been fully liquidated. If, upon completion or termination of the contract, all advance payments and interest charges have not been fully liquidated the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

[The percentage stated above should not be more than 95 percent. In appropriate cases, where more rapid liquidation is desirable, the following sentence may be inserted at the beginning of paragraph (e), with appropriate percentage specified.]

To liquidate the principal amount of any advance payment made to the Contractor hereunder, there shall be deductions of --- percent from any and all payments made by the Government under the contracts involved.

[The following paragraph is for use in cost-reimbursement contracts instead of the paragraph (e) above.]

(e) *Liquidation.* If not otherwise liquidated, the advance payments made hereunder and interest charges, if any, shall be liquidated as herein provided. When the sum of all payments under this contract, other than advance payments, plus the unliquidated amount of advance payments and interest charges are equal to the total estimated cost $------ for the work under this contract (not including fixed-fee, if any), or such lesser amount to which the total estimated cost under this contract may have been reduced, plus increases, if any, in this total estimated cost not exceeding, in the aggregate, $-------- (Insert not more than 10 percent of estimated costs stated above) (including, without limitation, reimbursable costs incident to termination for the convenience of the

Government as estimated by the Contracting Officer), the Government shall thereafter withhold further payments to the Contractor and apply the amounts withheld against the Contractor's obligation to repay such advance payments and interest charges, until such advance payments and interest charges shall have been fully liquidated. If upon completion or termination of the contract all advance payments and interest charges have not been fully liquidated, the balances thereof shall be deducted from any sums otherwise due or which may become due to the Contractor from the Government, and any deficiency shall be paid by the Contractor to the Government upon demand.

(f) *Interest charge.* If required in paragraph (n)(3) hereof and at the rate therein specified, the Contractor shall pay interest to the Government upon the daily unliquidated balance of advance payments made under this contract. If the full amount of such interest is not paid by deduction or othewise upon the completion or termination of this contract, the deficiency shall be paid by the Contractor to the Government upon demand. Interest at the rate specified in paragraph (n)(3) hereof shall be computed at the end of each calendar month in the manner herein specified on the average daily balance of the principal of the advance payments outstanding. Notwithstanding monthly computation, interest shall be computed for the actual number of days involved, on the basis of a 365- or 366-day year as the case may be. In determining such balance, (1) charges on account of the advance payments to the Contractor shall be made as of the date of the checks therefor, and (2) credits arising from deductions from payments to the Contractor shall be made as of the date of issue of the checks for such payments. [The following is for use in cost-reimbursement contracts instead of (2) above: (2) credits resulting from deductions from cost reimbursements shall be made upon the approval of the vouchers by the Disbursing Officer, as of the dates respectively upon which the Contractor presents to the Contracting Officer or his duly authorized representative full and accurate data for the preparation of each such voucher, which date as to each such voucher shall be certified by the Contracting Officer or his duly authorized representative.] Also, in determining such balance, credits arising from cash repayments to the Government by the Contractor shall be made as of the date the checks therefor are received by the Disbursing Officer. As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments otherwise due to the Contractor under the contracts on which advance payments have been made. [The following is for use in cost-plus-fixed-fee contracts instead of the next preceding sentence: As soon as such monthly computations shall have been made, the interest charge so determined shall be deducted from any payments on account of the fixed fee which may be made to the Contractor from time to time under the contract.] In the event the accrued interest exceeds any such payment, the excess of such interest shall be carried forward and deducted from subsequent payments on account of the contract price or fixed fee as the case may be. The interest shall not be compounded, and shall, subject to the provisions of paragraph (k) hereof, cease to accrue with respect to each contract upon which advance payments are outstanding hereunder, upon termination of such contract for other than the fault of the Contractor, or upon the date found by the Contracting Officer to be the date upon which the Contractor completed his performance under the contract.

(g) *Bank agreement.* Before an advance payment is made hereunder, the Contractor shall transmit to the Administering Office, in the form prescribed by such office, an Agreement in triplicate from the bank in which the Special Bank Account is established, clearly setting forth the special character of the account and the responsibilities of the bank thereunder. Wherever possible, such bank shall be a member bank of the Federal Reserve System, or an "insured" bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (Act of August 23, 1935, 49 Stat. 684, as amended; 12 U.S.C. 264).

(h) *Lien on Special Bank Account.* The Government shall have a lien upon any balance in the Special Bank Account paramount to all other liens, which lien shall secure the repayment of any advance payments made hereunder together with interest charges thereon.

(i) *Lien on property under contract.* Any and all advance payments made under this contract, together with interest charges thereon, shall be secured, when made, by a lien in favor of the Government, paramount to all other liens, upon the supplies or other things covered by this contract and on all material and other property acquired for or allocated to the performance of this contract, except to the extent that the Government by virtue of any other provision of this contract, or otherwise, shall have valid title to such supplies, materials, or other properly as against other creditors of the Contractor. The Contractor shall identify, by marking or segregaton, all property which is subject to a lien in favor of the Government by virtue of any provision of this contract in such a way as to indicate that it is subject to such lien and that it has been acquired for or allocated to the performance of this contract. If for any reason such supplies, materials, or other property are not identified by marking or segregation, the Government shall be deemed to have a lien to the extent of the Government's interest under this contract on any mass of property with which such supplies, materials, or other property are commingled. The Contractor shall maintain adequate accounting control over such property on his books and records. If at any time during the progress of the work on the contract it becomes necessary to deliver any item or items and materials upon which the Government has a lien as aforesaid to a third person, the Contractor shall notify such third person of the lien herein provided and shall obtain from such third person a receipt, in duplicate, acknowledging, interalia, the existence of such lien. A copy of each receipt shall be delivered by the Contractor to the Contracting Officer. If this contract is terminated in whole or in part and the Contractor is authorized to sell or retain termination inventory acquired for or allocated to this contract, such sale or retention shall be made only if approved by the Contracting Officer, which approval shall constitute a release of the Government's lien hereunder to the extent that such termination inventory is sold or retained, and to the extent that the proceeds of the sale, or the credit allowed for such retention on the Contractor's termination claim, is applied in reduction of advance payments then outstanding hereunder.

(j) *Insurance.* The Contractor represents and warrants that he is now maintaining with responsible insurance carriers, (1) insurance upon his own plant and equipment against fire and other hazards to the extent that like properties are usually insured by others operating plants and properties of similar character in the same general locality; (2) adequate insurance against liability on account of damage to persons or property; and (3) adequate insurance under all applicable workmen's compensation laws. The Contractor agrees that, until work under this contract has been completed and all advance payments made hereunder have been liquidated, he will (i) maintain such insurance; (ii) maintain adequate insurance upon any materials, parts, assemblies, subassemblies, supplies, equipment and other property acquired for or allocable to this contract and subject to the Government lien hereunder; and (iii) furnish such certificates with respect to his insurance as the Administering Office may from time to time require.

(k) *Default provisions.* Upon the happening of any of the following events of default, (1) termination of this contract by reason of fault of the Contractor; (2) a finding by the Administering Office that the Contractor (i) has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provision of this contract, or (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, or (iv) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (3) appointment of a trustee, receiver or liquidator for all or a substantial part of the Contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the contractor; (4) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings with respect to the Special Bank Account; or (5) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the Contractor, withhold further withdrawals from the Special Bank Account and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the Contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional actions as it may deem appropriate in the circumstances:

(1) Withdraw all or any part of the balance in the Special Bank Account by checks payable to the Treasurer of the United States signed solely by the Countersigning Agency and apply such amounts in reduction of advance payments then outstanding hereunder and in reduction of any other claims of the Government against the Contractor;

(2) Charge interest on advance payments outstanding during the period of any such default at the rate of 6 percent (6%) per annum;

(3) Demand immediate repayment of the unliquidated balance of advance payments hereunder; or

(4) Take possession of and, with or without advertisement, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the Contractor.

(l) *Prohibition against assignment.* Notwithstanding any other provision of this contract, the Contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(m) *Information—access to records.* The Contractor shall furnish to the Administering Office signed or certified balance sheets and profit and loss statements monthly, or at such other intervals as may be required,

together with a monthly report on the operation of the Special Bank Account in prescribed form, and such other information concerning the operation of the Contractor's business as may be requested The Contractor shall afford to authorized representatives of the Government proper facilities for inspection of the Contractor's books, records, and accounts.

(n) *Designations and determinations.*

(1) *Amount.* The amount of advance payments at any time outstanding hereunder shall not exceed $ ---------- [Or, alternatively:]

(1) *Amount.* The aggregate amount of the advance payments to be made hereunder (less the aggregate amounts paid or withdrawn pursuant to paragraph (d)) shall not exceed $ ---------.

(2) *Depository.* The bank designated for the deposit of payments made hereunder shall be ----------.

(3) *Interest charge.* Interest shall be charged in the manner provided herein at the rate of -- percent per annum. [In the case of advanced payments made without interest, insert the following:] No interest shall be charged for advance payments made hereunder, except interest during a period of default as provided for in paragraph (k). The Contractor shall charge interest at the rate of -- percent per annum on subadvances or downpayments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on nonprofit subcontracts with nonprofit educational or research institutions for experimental, research, or development work.

(4) *Administering Office.* The office administering advance payments is designated as ----------.

(o) *Other security.* The terms of this contract shall be considered adequate security for advance payments hereunder, except that if at any time the Administering Office deems the security furnished by the Contractor to be inadequate, the Contractor shall furnish such additional security as may be satisfactory to the Administering Office, to the extent that such additional security is available.

(p) *Representations and warranties.* To induce the making of the advance payments, the Contractor represents and warrants that:

(1) The balance sheet, the profit and loss statement and any other supporting financial statements, heretofore furnished to the Administering Office, fairly reflect the financial condition of the Contractor at the date shown on said balance sheet and the results of the operation for the period covered by the profit and loss statement, and since said date there has been no materially adverse change in the financial condition of the Contractor.

(2) No litigation or proceedings are presently pending or threatened against the Contractor, except as shown in the above statements.

(3) The Contractor, apart from liability resulting from the renegotiation of defense production contracts, has no contingent liabilities not provided for or disclosed in the financial statements furnished to the Administering Office.

(4) None of the provisions herein contravenes or is in conflict with the authority under which the Contractor is doing business or with the provision of any existing indenture or agreement of the Contractor.

(5) The Contractor has the power to enter into this contract and accept advance payments hereunder, and has taken all necessary action to authorize such acceptance under the terms and conditions of this contract.

(6) None of the assets of the Contractor is subject to any lien or encumberence of any character except for current taxes not delinquent, and except as shown in the financial statements furnished by the Contractor to the Administering Office. There has been no assignment of claims under any contract affected by these advance payment provisions, or if there has been any assignment, such assignments have been terminated.

(7) All information furnished by the Contractor to the Administering Office in connection with each request for advance payments is true and correct.

(8) These representations and warranties shall be continuing and shall be deemed to have been repeated by the submission of each invoice for advance payments.

(q) *Subadvances.* Substantially the following provision shall be included in the contract when subadvances are contemplated:

Subject to the prior written approval of the Administering Office, funds from the Special Bank Account may be used by the Contractor to make advance payments or downpayments to subcontractors and materialmen in advance of performance by the subcontractor or materialman. Such subadvances shall not exceed ------ percent of the subcontract price or estimated cost as the case may be, and the subcontractors or materialmen to whom such advances are made shall furnish adequate security therefor. Unless other security is required by the Administering Office, covenants in subcontracts, expressly made for the benefit of the Government providing for a Special Bank Account for the subadvance with Government lien thereon, and providing for a Government lien, paramount to all other liens, on all property under such subcontract, and imposing upon the subcontractor and the depository bank substantially the same duties and giving the Government substantially the same rights as are provided herein (and in the agreement for Special Bank Account supplementary hereto) between the Government, the Contractor and the Bank, may be considered as adequate for such subadvance.

(r) *Covenants.* The following are examples of some special provisions (subject to modification to adapt to the circumstances of individual cases) that may be utilized when and to the extent deemed appropriate in particular cases.

During the period of time that advance payments may be made hereunder and so long as any such advance payments remain unliquidated, the Contractor shall not, without the prior written consent of the Administering Office—

(1) Mortgage, pledge, or otherwise encumber, or suffer to be encumbered, any of the assets of the Contractor now owned or hereafter acquired by it, or permit any preexisting mortgages, liens or other encumbrances to remain on or attach to any assets of the Contractor which are allocated to the performance of this contract and with respect to which the Government has a lien hereunder;

(2) Sell, assign, transfer, or otherwise dispose of accounts receivable, notes or claims for money due or to become due;

(3) Declare or pay any dividends, except dividends payable in stock of the corporation, or make any other distribution on account of any shares of its capital stock, or purchase, redeem, or otherwise acquire for value any such stock, except as required by sinking fund or redemption arrangements reported to the Administering Office incident to the establishment of these advance payment provisions;

(4) Sell, convey, or lease all or a substantial part of its assets;

(5) Acquire for value the stock or other securities of any corporation, municipality, or governmental authority, except direct obligations of the United States;

(6) Make any advance or loan to or incur any liability as guarantor, surety, or accommodation endorser for any other firm, person, or corporation;

(7) Permit a writ of attachment or any similar process to be issued against its property without procuring release thereof or bonding the same within 30 days after the entry of the writ of attachment or any similar process;

(8) Pay any salaries, commissions, bonuses, or other remuneration in any form or manner to its directors, officers, or key employees in excess of existing rates of payments or of rates provided in existing agreements, in connection with which notice has been given to the Administering Office, or accrue such excess remuneration without first obtaining an agreement subordinating the same to all claims of the Government hereunder, or employ any person at a rate of compensation in excess of $------ per annum;

(9) Make any substantial change in management, ownership, or control of the corporation;

(10) Merge or consolidate with any other firm or corporation, change the type of its business or engage in any transaction outside the ordinary course of its business as presently conducted;

(11) Deposit any of its funds except in a bank or trust company insured by the Federal Deposit Insurance Corporation;

(12) Create or incur indebtedness for borrowed money or advances other than advances to be made hereunder, except as specified herein;

(13) Make or covenant itself to make capital expenditures exceeding in the aggregate $------;

(14) Permit its net current assets, calculated in accordance with generally accepted accounting principles, to become less than $------; or

(15) Make any payments on account of the obligations listed below, except in the manner and to the extent herein provided.

§ 1–30.415 [Reserved]

§ 1–30.416 [Reserved]

§ 1–30.417 [Reserved]

§ 1–30.418 [Reserved]

§ 1–30.419 Excluded advance payments.

This Subpart 1–30.4 does not apply to advances authorized by law for payment of rent; payment of tuition; insurance of official motor vehicles in foreign countries; expenses of investigations in foreign countries; extension or connection of public utilities for Government buildings or installations; subscriptions to newspapers, magazines, periodicals, and other publications; small purchases of goods or services in foreign countries, when the purchase price does not exceed $2,500 (or equivalent amount of applicable foreign currency) and advance payment of the purchase price or a part thereof is required by and made in compliance with the laws or ministerial, i.e., governmental, regulations of the foreign country concerned; and the enforcement of the customs or narcotics laws.

Subpart 1–30.5—Progress Payments Based on Costs

§ 1–30.500 Scope of subpart.

This subpart prescribes policies, procedures, and contract clauses for use in providing contract financing through progress payments based on costs.

§ 1–30.500–1 Exclusions.

This subpart does not apply to (a) cost-reimbursement type contracts, except as to progress payments to subcontractors and suppliers thereunder (see § 1–23.514), or (b) contracts providing for progress payments based on a percentage or stage of completion.

§ 1–30.501 Percentage or stage of completion.

Progress payments based on a percentage or stage of completion are ordinarily confined to contracts for construction, shipbuilding, ship conversion, alteration, or repair. For all other contracts, progress payment provisions shall be based on costs, as provided herein, except that when regulations of an agency permit, progress payments based on a percentage or stage of completion may be authorized by the head of the procuring activity when he determines that progress payments based on costs cannot be practically employed and that there are adequate safeguards provided for administration of the progress payment provisions. On existing contracts which provide for progress payments based on a percentage or stage of completion, it is not required that provision for progress payments based on costs be substituted in connection with future amendments, supplements, or modifications, if such substitution is found impracticable.

§ 1–30.502 General.

In furtherance of the basic policy expressed in § 1–30.210 that the need for financing is not to be treated as a handicap in awarding contracts to responsible contractors, progress payments may properly be used to supplement the private funds available to contractors for working capital purposes. It seldom should be necessary for progress payments based on costs to exceed 85 percent of direct labor and material costs, or 70 percent of total costs, of the work done under the undelivered portion of the contract.

§ 1–30.502–1 Procurement by negotiation—requests for proposals.

In connection with procurement by negotiation requests for proposals shall state that contract provision for progress payments will be made in conformity with these regulations, and that the need for progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts.

§ 1–30.503 Customary progress payments—standards.

(a) Certain types of production contracts involve a long "lead time" or preparatory period, normally approximating 6 months or more between the beginning of work and the first delivery, and may require contractor's predelivery expenditures that will have a material impact on the contractor's working funds. Familiar examples include, among others, contracts for reactors, engines, complex items of electrical or electronics equipment, heavy industrial chemicals, spacecraft, boosters, aircraft or spacecraft ground-handling equipment, turbines, heavy machinery, and handling equipment, and radiological instruments. Progress payments have been traditional and csutomary on this class of contracts, on the basis of a percentage of total costs or of direct labor and material costs. Percentages for customary progress payments shall be not more than 70 percent of total costs or 85 percent of direct labor and material costs of the work done under the undelivered portion of the contract, except that for negotiated contracts with small business concerns and for procurement by "Small Business Restricted Advertising" (see § 1–1.701–9) or pursuant to § 1–30.504–3, these percentages may be 75 percent of total costs or 90 percent of direct labor and material costs whenever deemed reasonably necessary. Higher percentages will be regarded as unusual, and not within the category of customary progress payments.

(b) The long lead time or preparatory period in these cases, and the accompanying predelivery expenditures that may have a material impact in the contractor's working funds, are regarded as making these customary progress payments reasonably necessary, and as making the general preference for private financing not applicable to this class of cases. Provision for customary progress payments should be made as a matter of course when requested by contractors who are known (from experience or adequate preaward investigation) to be reliable, competent, capable of satisfactory performance, in satisfactory financial condition, and to have an adequate accounting system and controls. In such cases, it is not necessary to require projections of cash receipts and expenditures or other demonstration of actual reasonable need for progress payments. However, in order to minimize administrative effort and expense, progress payments will be discouraged on negotiated contracts of less than $1 million with the stronger and larger contractors who are not small business concerns, unless the circumstances of a group of such contracts for contemporaneous performance by a contractor, make such contracts the approximate equivalent of a larger contract that would have a material impact on the contractor's working funds. On the other hand, if a small business concern is involved and the contract meets these standards for customary progress payments, the smallness of the contract shall not deter the making of provision for progress payments to such small business concern.

§ 1–30.503–1 Applicability of percentages.

The standard percentages authorized by §§ 1–30.503 and 1–30.504 should apply to new contracts, new procurement effected by supplements, amendments or modifications of existing contracts, definitive contracts superseding letter contracts, instruments effecting new procurement under basic or master agreements, and to all supplements, amendments, or modifications which affect or provide for progress payments as well as to any outstanding contracts which contain optional provision as to progress payment percentages, after due notice by the contracting officer (see § 1–30.524).

§ 1–30.503–2 Indefinite quantity contracts.

Ordinarily progress payments will not be undertaken in indefinite quantity contracts which do not provide for payments and liquidation by a single office. Otherwise, for indefinite quantity contracts, contemplating requisitions, delivery orders, work orders, task orders, job orders, or their equivalent, if the contractor meets all other requirements for customary progress payments, the decision as to whether progress payments come within the customary category will depend upon estimates of the amount of work expected to be done, and the production lead time expected to be necessary for the major part of the work anticipated. In these cases, provision for progress payments in the indefinite quantity contract may be deemed customary if the amounts involved, and the production lead time, will result in the substantial equivalent of the customary progress payments. The standards for unusual progress payments govern when progress payments are not of the customary type.

§ 1–30.503–3 Administration.

When progress payments are provided in the cases mentioned in § 1–30.503–2, such as indefinite quantity contracts for overhaul or maintenance, (a) the contract price is deemed to be the total of the amount of requisitions, delivery orders, work orders, task orders, or their equivalent issued under the basic contract, (b) costs for progress payment purposes are the costs allocable to all such requisitions, etc., and (c) payments and liquidations will be handled in the same way as if all such requisitions, etc., constituted work under a single fixed-price type contract.

§ 1–30.504 Formal advertising—small business restricted advertising.

Incident to formal advertising, invitations for bids shall provide for progress payments in the manner and under the circumstances stated in this § 1–30.504.

§ 1–30.504–1 Progress payment provision in invitations for bids.

(a) Provision for progress payments shall be included in invitations for bids in accordance with the following criteria.

(1) The invitations for bids shall, except as provided in subparagraph (2) of this paragraph, include provision for progress payments whenever the contracting officer:

(i) Considers that the period between the beginning of work and the required first production delivery will exceed 6 months, or

(ii) Considers that progress payments will be useful or necessary by reason of circumstances that will involve substan-

tial accumulation of predelivery costs that may have a material impact on a contractor's working funds (including but not limited to substantial small business set-asides expected to involve a relatively large predelivery accumulation of materials, purchased parts or components), or

(iii) Estimates that the procurement will involve approximately $100,000 or more and that bids are likely to be submitted by one or more small business concerns.

(2) Provision for progress payments ordinarily will not be made in invitations for bids when the procurement is estimated to be less than $10,000, or is for quick turnover items of kinds for which predelivery financing by progress payments is not the custom or practice on sales by members of the industry to private commercial customers, such as (i) subsistence, (ii) clothing and apparel, (iii) "off-the-shelf" items, and (iv) standard commercial items or equivalent items (including medical and dental supplies), not requiring substantial accumulation of predelivery expenditures.

(3) Reasonable doubts should be resolved in favor of inclusion of progress payment provisions in invitations for bids, in order to (i) facilitate necessary contract financing assistance to small suppliers, and (ii) avoid the necessity for rejecting, as nonresponsive, bids conditioned on progress payments when the invitations for bids do not provide for progress payments.

(b) When progress payments are contemplated, the invitations for bids shall state (1) that the need for progress payments conforming to regulations will not be considered as a handicap or adverse factor in the award of contracts, and that bids including requests for progress payments will be evaluated on an equal basis with bids not including requests for progress payments, and (2) that upon written request by the prospective contractor a progress payment clause (to be included in the invitations for bids or identified by appropriate reference therein, and to be the appropriate one of the contract clauses at 70 percent of total costs or 85 percent of costs of direct labor and material) will be included in the contract at the time of awards. (See § 1-30.504-4(a) for notice to bidders.) This latter statement may be modified as provided in paragraph (c) of this section.

(c) In unusual circumstances, the Contracting Officer may consider it to be in the interest of the Government to contemplate progress payments but to provide for application of the criteria specified in § 1-30.504-1(a)(1) after the opening of bids, and to select, at the time of award, a progress payment clause appropriate for the prospective contractor. In such event the invitations shall (in lieu of the requirement set forth in paragraph (b)(2) of this section) state that upon written request by the prospective contractor a progress payment clause, of a type considered appropriate to the circumstances, will be included in the contract at the time of award if the Contracting Officer considers the contractor eligible under applicable regulations. (See § 1-30.504-4(b) for appropriate notice to bidders.)

§ 1-30.504-2 Small business restricted advertising.

The above policy and standards also apply to procurement by "Small Business Restricted Advertising," except that in "Small Business Restricted Advertising" (and also for procurement pursuant to § 1-30.504-3), when deemed reasonably necessary, provision may be made for progress payment percentages up to 75 percent of total costs or 90 percent of costs of direct labor and material.

§ 1-30.504-3 Progress payments exclusively for small business.

A stated purpose of Public Law 85-800, 72 Stat. 966, is "to improve opportunities for small business concerns to obtain a fair proportion of Government purchases and contracts." One of the sections of this statute amended section 305 of the Property Act, and 10 U.S.C. 2307 by providing that contracting agencies "may—insert in bid solicitations—a provision limiting to small business concerns—progress payments." In furtherance of the purposes of this statute, whenever provision for progress payments is to be made in invitations for bids (as provided by §§ 1-30.504-1 and 1-30.504-4), careful consideration shall be given as to whether or not the contemplated availability of progress payments shall be restricted to small business concerns only. If it is considered by the contracting officer that progress payments should not be reasonably necessary for prospective bidders other than small business concerns, the provision for progress payments (§ 1-30.504-1) and the notice to bidders (§ 1-30.504-4) will be supplemented by a limitation to the effect that—

The Progress Payments clause will be available to small business concerns only, and will not be included for Contractors who are not small business concerns.

For progress payment percentages applicable to contracts with small business concerns (see §§ 1-30.503 and 1-30.504-2).

§ 1-30.504-4 Notice to bidders.

(a) Those invitations for bids that make provision for progress payments pursuant to § 1-30.504-1(b) should contain substantially the following notice to bidders:

PROGRESS PAYMENTS

The need for progress payments conforming to applicable regulations (Part 1-30, Federal Procurement Regulations) will not be considered as a handicap or adverse factor in the award of contracts hereunder. Bidders desiring progress payments in accordance with the Progress Payments clause attached hereto, shall include a written request therefor in their bids, and bids including requests for progress payments will be evaluated on an equal basis with bids not including such a request. Blanks, if any, in the attached Progress Payments clause, will be filled in by the Contracting Officer, before award, in conformity with regulations.* If a bid does not contain a request for progress payment provision, the Progress Payments clause will not be included in the contract as awarded.

[*Omit the third sentence, above, when either Total Costs clause of § 1-30.510-1 is used.]

(b) Those invitations for bids that make provision for progress payments pursuant to § 1-30.504-1(c) should contain substantially the following notice to bidders:

PROGRESS PAYMENTS

The need for progress payments conforming to applicable regulations (Part 1-30, Federal Procurement Regulations) will not be considered as a handicap or adverse factor in the award of contracts hereunder. Bidders desiring progress payments shall include a written request therefor in their bids, and bids including requests for progress payments will be evaluated on an equal basis with bids not including such a request. If the Contracting Officer considers the Contractor eligible for progress payments under applicable regulations an appropriate Progress Payment clause will be included in the contract as awarded. If the bid does not contain a request for progress payment provision, the Progress Payments clause will not be included in the contract as awarded.

§ 1-30.504-5 Total costs clause preferable.

The Total Costs clause (§ 1-30.510-1) is preferable to the Direct Labor and Materials Cost clause (§ 1-30.510-2) in procurement by formal advertising and in Small Business Restricted Advertising. When the Total Costs clause (§ 1-30.510-1) is used, it is not necessary to make the cost estimates and computations that are required before the appropriate percentages can be determined for (a)(3)(ii), (a)(4) and (b) of the Direct Labor and Materials Cost clause (§ 1-30.510-2). Generally, the principles of § 1-30.523 and § 1-30.524-6 should be simpler to apply to the Total Costs clause (§ 1-30.510-1) than to the Direct Labor and Materials Cost clause (§ 1-30.510-2).

§ 1-30.504-6 Nonresponsive bids—uninvited progress payment condition.

To minimize the possibility of misunderstandings, the recipients of invitations for bids, or those included on bidders lists, should be informed and kept aware that when invitations for bids do not provide for progress payments, Progress Payment clauses cannot be included in the contract at time of award, and that bids conditioned upon provision for progress payments will have to be rejected as nonresponsive. This precautionary warning notice may be included in invitations for bids, or may accompany invitations for bids, or may be otherwise circulated or made known to prospective bidders by such means as are considered appropriate. Also, prospective bidders who are not small business concerns should be given appropriate precautionary warning notice that when invitations for bids provide for progress payments for small business concerns only (§ 1-30.504-3), progress payment provision cannot be made for contractors who are not small business concerns, and that bids of those who are not small business concerns, if conditioned upon provision for progress payments, will have to be rejected as nonresponsive.

§ 1–30.505 Unusual progress payments—standards—procedure.

(a) Progress payments based on costs, other than progress payments of the class and within the percentage limits set forth in §§ 1–30.503 and 1–30.504, will be regarded as unusual, and require special approval. This is deemed necessary for the purpose of minimizing risks, and in order to establish and maintain the greatest practicable uniformity with regard to such progress payments within and among the executive agencies. Any contractor seeking provision for progress payments that is "unusual," within the meaning of the regulations in this part, should be required to demonstrate fully his actual need therefor, with due regard to the preference for private financing, including guaranteed loans. Requests for "unusual" progress payments should be approved only under exceptional circumstances in accordance with agency procedures and should have the specific approval of the head of the procuring activity, or an official duly designated for that purpose.

(b) Such cases must involve a preparatory period requiring contractor's predelivery expenditures that are large in relation to the contract price and in relation to the contractor's working capital and credit. Contract provisions for progress payments in this category will be only supplementary to private financing, including guaranteed loans, in amounts necessary for contract performance. The percentage rates and cost bases for progress payments on new procurement in this category will be determined on a minimum basis commensurate with the contractor's production schedule requirements and minimum inventory lead time, with due regard to the contractor's projected cash needs, cash resources, and their planned application.

§ 1–30.506 Accounting system and controls.

The contractor's accounting system and controls must be adequate for the proper administration of progress payments. If the contractor's accounting system and controls have been found (by experience or by audit examination) to be sufficient and reliable for segregation and accumulation of contract costs, no further examination should be necessary so long as the efficiency and reliability of the contractor's system and controls are maintained. In all doubtful cases, including contracts with contractors with whom the procuring activity has had no experience within the next preceding 12 months, the adequacy of the contractor's accounting system and controls shall be determined, and any necessary changes accomplished, before inclusion of a Progress Payments clause in a contract.

§ 1–30.507 Information required.

The information required to support a contract provision for progress payments is that which is found necessary under the circumstances of each case to establish that the case complies with Subparts 1–30.2 and 1–30.5. For guidance as to necessity for financial information and analysis, and the scope, depth, and detail of analysis, see particularly §§ 1–30.213 and 1–30.214.

§ 1–30.508 Advance payments.

When advance payments and progress payments are authorized in the same contract, progress payment percentages shall not exceed 85 percent of direct labor and material costs or 70 percent of total costs, whichever may be applicable.

§ 1–30.509 Definitions.

As used in this Part 1–30, the following terms have the meanings set forth below.

§ 1–30.509–1 Progress payments.

See § 1–30.106 for definition of progress payments and § 1–30.109 for definition of partial payments. The term "progress payments" must be distinguished from "partial payments."

§ 1–30.509–2 Customary progress payments.

See § 1–30.503 and § 1–30.504.

§ 1–30.509–3 Unusual progress payments.

See § 1–30.505.

§ 1–30.509–4 Costs.

Costs include all expenses of contract performance which are reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices, and not excluded by the contract. The term "costs" includes "incurred costs" when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business. It may also include incurred costs, after such delinquency, to the extent provided in § 1–30.524–4.

§ 1–30.509–5 Incurred costs.

Incurred costs are those costs identified through the use of the accrual method of accounting and reporting. As to invoices, incurred costs include only invoices for (a) completed work to which the prime contractor has acquired title; (b) materials delivered (to which the prime contractor has acquired title); (c) services rendered; (d) costs billed under cost reimbursement or time and material subconstracts for work to which the prime contractor has acquired title; and (e) invoices for progress payments to subcontractors which have been paid or approved for current payment in the ordinary course of business (as specified in the prime contract), all properly recorded on the books of the contractor and identified with the contract. Costs incurred include costs of direct labor, direct material, and direct services identified with and necessary for the performance of the contract, and also all properly allocated and allowable overhead (indirect) costs as shown by the books of the contractor.

§ 1–30.509–6 Unliquidated progress payments.

Unliquidated progress payments are the aggregate sum of all progress payments made, less the aggregate sum of amounts applied to reduce progress payments.

§ 1–30.509–7 Contract price.

The term "contract price" means the total amount fixed by the contract (other than any portion of the contract specifically providing for cost reimbursement only), as amended, to be paid for complete performance of the contract. If the contract provides for escalation or for redetermination of price, this term means the intial price until changed and not the ceiling price. If the contract is of the incentive type, this term means the initial or target price until changed, and not the ceiling or maximum price. For letter contracts and similar preliminary contractual instruments, this term means the maximum expenditure authorized by the contract, as amended.

§ 1–30.509–8 Amendments, supplements, and modifications.

The terms "amendment", "supplement," and "modification" are used interchangeably, and whenever one of these terms is used it includes the others. The terms "separate new contracts," and "separate contracts," as used herein, do not include "amendments."

§ 1–30.509–9 Deviation.

The term "deviation" is defined in § 1–1.009–1. Actions pursuant to § 1–30.511–6 are not deviations.

§ 1–30.510 Contract clauses.

The following Progress Payments clauses shall be used whenever progress payments are to be made to a contractor based upon a percentage of costs, whether or not the contract schedule provides for reimbursement of progress payments to subcontractors. (See § 1–30.513.)

§ 1–30.510–1 Total costs clause.

(a) Whenever progress payments are to be based upon a percentage of total costs the following clause shall be used, except as otherwise provided in § 1–30.510–1(b).

PROGRESS PAYMENTS

(Total Costs)

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of amounts.* (1) Unless a smaller amount is requested, each progress payment shall be (i) 70 percent of the amount of the Contractor's total costs incurred under this contract plus (ii) the amount of progress payments to subcontractors as provided in (j) below; all less the sum of previous progress payments. (2) The Contractor's total costs ((a)(1)(i)) shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs. (3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 70 percent of the costs mentioned in (a)(1)(i) of this clause, plus any unliquidated progress payments mentioned in item (a)(1)(ii), both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) 70 percent of the total contract price of supplies and services not yet delivered and invoices to and accepted by the Government, less unliquidated advance payments. (4) The aggregate amount of progress payments made shall not exceed 70 percent of the total contract price. (5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by paragraph (a) of this clause, the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination for Convenience of the Government," all progress payments shall be liquidated by deducting from any payment under this contract, other than advance or progress, the amount of unliquidated progress payments, or 70 percent (see § 1-30.512-2 for lower percentage) of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly.

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in (b) of this clause, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, (iv) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, (v) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract, or (vi) is realizing less profit than the estimated profit used for establishing a liquidation percentage in paragraph (b), if that liquidation percentage is less than the percentage stated in paragraph (a)(1).

(d) *Title.* Immediately, upon the date of this contract, title to all parts; materials; inventories; work in process; special tooling, nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment, and other similar manufacturing aids not considered special tooling; and drawings and technical data (to the extent delivery thereof to the Government is required by other provisions of this contract); theretofore acquired or produced by the Contractor and allocated or properly chargeable to this contract under sound and generally accepted accounting principles and practices shall forthwith vest in the Government; and title to all like property thereafter acquired or produced by the Contractor and allocated or properly chargeable to this contract as aforesaid shall forthwith vest in the Government upon said acquisition, production or allocation. Notwithstanding that title to property is in the Government through the operation of this clause, the handling and disposition of such property shall be determined by the applicable provisions of this contract such as: The Default clause and paragraph (h) of this clause; Termination for Convenience of the Government clause. Current production scrap may be sold by the Contractor without approval of the Contracting Officer and the proceeds shall be credited against the costs of contract performance. With the consent of the Contracting Officer and on terms approved by him, the Contractor may acquire or dispose of property to which title is vested in the Government pursuant to this clause, and in that event, the costs allocable to the property so transferred from this contract shall be eliminated from the costs of contract performance and the Contractor shall repay to the Government (by cash or credit memorandum) an amount equal to the unliquidated progress payments allocable to the property so transferred. Upon completion of performance of all the obligations of the Contractor under this contract, including liquidation of all progress payments hereunder, title to all property (or the proceeds thereof) which had not been delivered to, and accepted by the Government under this contract or which had not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor. The provisions of this contract referring to or defining liability for Government-furnished property shall not apply to property to which the Government shall have acquired title solely by virtue of the provisions of this clause.

(e) *Risk of loss.* Except to the extent that the Government shall have otherwise expressly assumed the risk of loss of property, title to which vests in the Government pursuant to this clause, in the event of the loss, theft, or destruction of, or damage to any such property before its delivery to and acceptance by the Government, the Contractor shall bear the risk of loss and shall repay the Government an amount equal to the unliquidated progress payments based on costs allocable to such lost, destroyed or damaged property.

(f) *Control of cost and property.* The Contractor shall maintain an accounting system and controls adequate for the proper administration of this clause.

(g) *Reports—access to records.* Insofar as pertinent to the administration of this clause, the Contractor will (i) furnish promptly such relevant reports, certificates, financial statements, and other information as may be reasonably requested by the Contracting Officer, and (ii) give the Government reasonable opportunity to examine and verify his books, records, and accounts.

(h) *Special provisions regarding default.* If this contract is terminated pursuant to the clause entitled "Default," (i) the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments and (ii) with respect to all property as to which the Government elects not to require delivery under the clause entitled "Default," title shall vest in the Contractor upon full liquidation of progress payments, and the Government shall be liable for no payment except as provided by the "Default" clause.

(i) *Reservations of rights.* The rights and remedies of the Government provided in this clause shall not be exclusive, and are in addition to any other rights and remedies provided by law or under this contract. No payment, or vesting of title pursuant to this clause, shall excuse the Contractor from performance of his obligations under this contract, nor constitute a waiver of any of the rights and remedies of the parties under this contract. No delay or failure of the Government in exercising any right, power, or privilege under this clause shall affect any such right, power, or privilege, nor shall any single or partial exercise thereof preclude or impair any further exercise thereof or the exercise of any other right, power, or privilege of the Government.

(j) *Progress payments to subcontractors.* (1) The amount mentioned in (a)(1)(ii) of this clause shall be the sum of (i) all the progress payments made by the Contractor to his subcontractors and remaining unliquidated, and (ii) unpaid billings for progress payments to subcontractors which have been approved for current payment in the ordinary course of business, when under subcontracts which conform to (j)(2) of this clause. (2) Subcontracts on which progress payments to subcontractors may be included in the base for progress payments pursuant to paragraph (a) of this clause are limited to those subcontracts in which there is expected to be a long "lead time," approximating 6 months or more between the beginning of work and the first delivery, containing subcontract progress payment provisions which (i) are substantially similar to and as favorable to the Government as this "Progress Payments" clause, no more favorable to the subcontractor than this clause is to the Contractor and on a basis of not more than 70 percent of total costs or 85 percent of direct labor and material costs (except that these percentages may be 75 percent of total costs or 90 percent of direct labor and material costs for those subcontractors which are small business concerns), and (ii) make all rights of the subcontractor with respect to all property to which the Government has title under the subcontract subordinate to the rights of the Government to require delivery of such property to it in the event of default by the Contractor under this contract or in the event of the bankruptcy or insolvency of the subcontractor. (3) The Government agrees that any proceeds received by it from property to which it has acquired title by virtue of such provisions in any subcontract shall be applied to reduce the amount of unliquidated progress payments made by the Government to the Contractor under this contract. In the event the Contractor fully liquidates such progress payments made by the Government to him hereunder and there are progress payments to any subcontractors which are unliquidated, the Contractor shall be subrogated to all the Government's rights by virtue of such provisions in the subcontract or subcontracts involved as if all such rights had been thereupon assigned and transferred to the Contractor. (4) The billings described in (j)(1)(ii) of this clause shall be paid promptly by the Contractor in the ordinary course of business, not later than a reasonable time after payment of equivalent amounts by the Government to the Contractor. (5) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to those subcontractors which are small business concerns, in conformity with the standards for customary progress payments stated in § 1-30.503 of the Federal Procurement Regulations, as in effect on the date of this contract. The Contractor

further agrees that the need for such progress payments will not be considered as a handicap or adverse factor in the award of subcontracts.

(b) Whenever it is estimated that the procurement will not exceed $100,000, and progress payments are to be based upon a percentage of total costs, the following short form clause may be used.

PROGRESS PAYMENTS—SHORT FORM "TOTAL COSTS" CLAUSE

Upon request of the Contractor, progress payments shall be made to the Contractor from time to time as work progresses, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of amounts.*

(1) Unless a smaller amount is requested, each progress payment shall be 70 percent of the Contractor's cumulative total costs under this contract, less the sum of any previous progress payments.

(2) The Contractor's costs must be reasonable, allocable to this contract, consistent with sound and generally accepted accounting principles, and may include depreciation or amortization allowance. Such costs shall exclude amounts for materials to which the Contractor has not acquired title.

(3) At no time shall unliquidated progress payments exceed 70 percent of the total contract price of the items and services not yet delivered and invoiced to and accepted by the Government.

(4) In no event may the aggregate amount of progress payments made exceed 70 percent of the total contract price.

(b) *Recovery of progress payments.* Except as otherwise provided in this contract, payments by the Government for materials delivered, invoiced and accepted shall be reduced by 70 percent of the contract price of such items and the amount of the reduction applied against progress payments previously made until such time as the total of all progress payments has been recovered.

(c) *Reduction or suspension.* The Government reserves the right to withhold or reduce progress payments and to increase the liquidation rate if in the opinion of the Contracting Officer the Contractor is in such unsatisfactory financial condition or has so failed to make progress as to endanger contract performance and recoupment of progress payments.

(d) *Title to material and work.* When any progress payment is made under this contract, title to material acquired and work performed under this contract shall vest in the Government, and title to all like property thereafter acquired or produced by the Contractor and properly chargeable to this contract under generally accepted accounting principles shall vest in the Government. The Contractor shall repay to the Government an amount equal to that portion of the unliquidated progress payments allocable to material lost, stolen, destroyed, or damaged. Upon completion of performance of all obligations of the Contractor under this contract, title to all property and work not delivered to and accepted by the Government under this contract and to which title had vested in the Government under this contract shall vest in the Contractor.

(e) *Records and reports.* The Contractor shall maintain reasonable controls for proper administration of this clause and shall furnish such statements and information as may reasonably be requested by the Contracting Officer. The Government shall be afforded reasonable opportunity to examine the Contractor's books, records, and accounts.

(f) *Default.* If this contract is terminated for default, the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments, less any amounts payable to the Contractor in accordance with the default clause.

(g) *Reservation of rights.* The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 1–30.510–2 Direct labor and materials cost clause.

(a) Whenever progress payments are to be based upon a percentage of direct labor and materials cost the following clause shall be used, except as otherwise provided in § 1–30.510–2(b).

PROGRESS PAYMENTS

(Direct Labor and Materials Cost)

Progress payments shall be made to the Contractor as work progresses, from time to time upon request, in amounts approved by the Contracting Officer upon the following terms and conditions:

(a) *Computation of amounts.*

(1) Unless a smaller amount is requested, each progress payment shall be (i) 85 percent of the amount of the Contractor's costs incurred of direct labor and material [strike out "labor and" or "and material" if progress payments are limited to single direct cost] only under this contract plus (ii) the amount of progress payments to his subcontractors as provided in (j) of this clause; all less the sum of previous progress payments.

(2) The Contractor's costs mentioned in (a)(1)(i) of this clause shall be reasonable, allocable to this contract, and consistent with sound and generally accepted accounting principles and practices. However, such costs shall not include (i) any costs incurred by subcontractors or suppliers, or (ii) any payments or amounts payable to subcontractors or suppliers, except for completed work (including partial deliveries) to which the Contractor has acquired title, and except for amounts paid or payable under cost-reimbursement or time and material subcontracts for work to which the Contractor has acquired title, or (iii) costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs.

(3) The amount of unliquidated progress payments shall not exceed the lesser of (i) 85 percent of the costs mentioned in (a)(1)(i) of this clause, plus any progress payments mentioned in (a)(1)(ii), both of which are applicable only to the supplies and services not yet delivered and invoiced to and accepted by the Government, or (ii) -- percent of the total contract price of supplies and services not yet delivered and invoiced to and accepted by the Government, less unliquidated advance payments. [For percentage here and in (a)(4), see the first bracketed instruction in (b) of this clause.]

(4) The aggregate amount of progress payments made shall not exceed -- percent of the total contract price.

(5) If at any time a progress payment or the unliquidated progress payments exceed the amount permitted by this paragraph (a), the Contractor shall pay the amount of such excess to the Government upon demand.

(b) *Liquidation.* Except as provided in the clause entitled "Termination for Convenience of the Government," all progress payments shall be liquidated by deducting from any payment under the contract, other than advance or progress, the amount of unliquidated progress payments or ------ percent [insert a percentage which is to 85 percent as the amount of estimated costs forming the basis for progress payments is to the amount of the estimated total cost] of the gross amount invoiced, whichever is less. Repayment to the Government required by a retroactive price reduction will be made after recalculating liquidations and payments on past invoices at the reduced prices and adjusting the unliquidated progress payments accordingly. [For percentage for this paragraph, lower than the percentage computed pursuant to the above instruction and §1–30.512–1(b), see § 1–30.512–2.]

(c) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments, or liquidate them at a rate higher than the percentage stated in paragraph (b) above, or both, whenever he finds upon substantial evidence that the Contractor (i) has failed to comply with any material requirement of this contract, (ii) has so failed to make progress, or is in such unsatisfactory financial condtion, as to endanger performance of this contract, (iii) has allocated inventory to this contract substantially exceeding reasonable requirements; (iv) is incurring costs, whether or not of the kinds eligible for progress payments under paragraph (a)(1) of this clause, which are higher than the respective estimated costs used for establishing the liquidation percentage in paragraph (b) above, (v) is delinquent in payment of the costs of performance of this contract in the ordinary course of business, or (vi) has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of this contract.

(d) *Title.* [Same as par. (d) of "Total costs" clause set forth in § 1–30.510–1(a).]

(e) *Risk of loss.* [Same as par. (e) of "Total costs" clause set forth in § 1–30.510–1(a).]

(f) *Control of costs and property.* [Same as par. (f) of "Total costs" clause set forth in § 1–30.510–1(a).]

(g) *Reports-access to records.* [Same as par. (g) of "Total costs" clause set forth in § 1–30.510–1(a).]

(h) *Special provisions regarding default.* [Same as par. (h) of "Total costs" clause set forth in § 1–30.510–1(a).]

(i) *Reservations of rights.* [Same as par. (i) of "Total costs" clause set forth in § 1–30.510–1(a).]

(j) *Progress payments to subcontractors.* [Same as par. (j) of "Total costs" clause set forth in § 1–30.510–1(a).]

(b) Whenever it is estimated that the procurement will not exceed $100,000, and progress payments are to be based upon a percentage of direct labor and materials cost the following short form clause may be used.

PROGRESS PAYMENTS—"SHORT FORM" CLAUSE BASED ON BOTH DIRECT LABOR AND MATERIAL COSTS OR WHEN LIMITED TO EITHER LABOR OR MATERIAL

Upon request of the Contractor, progress payments shall be made to the Contractor from time to time as work progresses, in amounts approved by the Contracting Officer, upon the following terms and conditions:

(a) *Computation of amounts.*

(1) Unless a smaller amount is requested, each progress payment shall be 85 percent of the Contractor's cumulative costs of direct labor performed and material acquired (strike out inapplicable language if limited to a single direct cost) for performance of this contract; less the sum of previous progress payments.

(2) Contractor's costs above mentioned must be reasonable, allocable to this contract and consistent with generally accepted accounting principles.

(3) At no time shall the amount of unliquidated progress payments exceed ------ percent of the total contract price of items and services not yet delivered, invoiced to,

and accepted by the Government; also, the aggregate amount of progress payments made may not exceed _____ percent of the total contract price. (These percentages shall be the same as in (b) below.)

(b) *Recovery of progress payments.* Except as otherwise provided in this contract, payments by the Government for materials delivered, invoiced to, and accepted by the Government shall be reduced by __ percent and the amount of the reduction applied against progress payments previously made until such time as the total of all progress payments has been liquidated. (The percentage to be inserted here and in (a)(3) above should be calculated as those in the following example: If the base for progress payments is 85 percent of the cost of direct labor and material and if estimated costs of direct labor and material are 80 percent of total estimated costs, liquidation would be at a rate not less than 68 percent (85×80) of the contract price of delivered items.)

(c) *Reduction or suspension.* The Government reserves the right to withhold or reduce progress payments and to increase the liquidation rate if in the opinion of the Contracting Officer the Contractor is in such unsatisfactory financial condition or has so failed to make progress as to endanger contract performance and recoupment of progress payments.

(d) *Title to material and work.* When any progress payment is made under this contract, title to material acquired and work performed under this contract shall vest in the Government, and title to all like property thereafter acquired or produced by the Contractor and properly chargeable to this contract under generally accepted accounting practices shall vest in the Government. The Contractor shall repay to the Government an amount equal to that portion of the unliquidated progress payments allocable to material lost, stolen, destroyed, or damaged. Upon completion of performance of all obligations of the Contractor under this contract, title to all property not delivered to and accepted by the Government under this contract and to which title had vested in the Government under this contract shall vest in the Contractor.

(e) *Records and reports.* The Contractor shall maintain reasonable controls for proper administration of this clause and shall furnish such statements and information as may reasonably be requested by the Contracting Officer. The Government shall be afforded reasonable opportunity to examine the Contractor's books, records, and accounts.

(f) *Default.* If this contract is terminated for default, the Contractor shall, upon demand, pay to the Government the amount of unliquidated progress payments, less any amounts payable to the Contractor in accordance with the Default clause.

(g) *Reservation of rights.* The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

[End of Clause]

§ 1–30.511 General instructions for progress payment clauses.

The following instructions apply to the clauses required by § 1–30.510 and set forth in §§ 1–30.510–1 and 1–30.510–2.

§ 1–30.511–1 Contracting officer.

The term "contracting officer" as used in this Subpart 1–30.5 means the contracting officer as defined in § 1–1.207.

§ 1–30.511–2 Variation in percentages.

The percentages stated in paragraph (a)(1) of the clauses in §§ 1–30.510–1 and 1–30.510–2 are the normal percentages for the customary progress payments authorized by § 1–30.503. Higher percentages may be provided in the manner and to the extent authorized by § 1–30.505. Lower percentages may be used in (a)(1) of the clauses in §§ 1–30.510–1 and 1–30.510–2 when agreed, and will be used for unusual progress payments when found adequate in accordance with the standards set forth in § 1–30.505. Such lower percentages shall not be utilized for progress payments pursuant to § 1–30.504.

§ 1–30.511–3 Total cost basis—percentage other than 70 percent.

If a percentage other than 70 percent is specified in (a)(1)(i) of the Total Costs clause set forth in § 1–30.510–1(a), the percentage actually specified in (a)(1)(i) of the Progress Payments clause of the contract shall also be specified in (a)(3)(i), (a)(3)(ii), (a)(4), and (b) of the Progress Payments clause. (As to (b), see § 1–30.512.) Likewise if a percentage other than 70 percent is specified in (a)(1) of the short form Total Costs clause set forth in § 1–30.510–1(b), the percentage actually specified shall also be specified in (a)(3), (a)(4), and (b) of the short form Progress Payments clause.

§ 1–30.511–4 Limited cost basis—other percentages.

When the Progress Payments clause set forth in § 1–30.510–2(a) is used, the percentage actually specified in (a)(1)(i) of the Progress Payments clause of the contract will also be specified in (a)(3)(i). The percentage to be specified in (a)(3)(ii), (a)(4), and (b) of that clause will be computed in the manner provided in § 1–30.512–1, except that a percentage higher than the percentage so computed may be specified in paragraph (b) if agreed. Subject to this exception permitting use of a higher percentage in (b) (or a lower percentage in (b) established pursuant to § 1–30.512–2) the percentage to be specified in (a)(3)(ii), (a)(4), and (b) will thus be a percentage which is to the percentage in (a)(1) as the amount of estimated costs forming the basis for progress payments is to the amount of estimated total cost of performance of the undelivered portion of the contract. This same principle will apply if a narrower cost basis, more limited than the cost basis stated in § 1–30.510–2, is utilized for progress payments. (See § 1–30.511–5.)

§ 1–30.511–5 Cost basis less than direct labor and material costs.

Instead of the direct labor and material cost basis provided in § 1–30.510–2, a narrower and more limited cost basis for progress payments may be utilized for that clause, such as direct labor only, direct material only, or direct labor or material costs applicable only to certain specified items, or specified direct costs other than direct labor or material costs. Appropriate changes will be made in (a)(1)(i) of the clause set forth in § 1–30.510–2(a) when such a narrower and more limited cost basis is to be used. For example, if eligible costs are to be limited to direct material costs, the words "labor and" should be deleted from (a)(1)(i); or, if eligible costs are to be limited to direct labor costs, the words "and material" should be deleted from (a)(1)(i). If the clause set forth in § 1–30.510–2(b) is used the appropriate changes are indicated in the body of the clause.

§ 1–30.511–6 Other protective provisions.

When deemed reasonably necessary for the protection of the Government, the clauses set forth in §§ 1–30.510–1 and 1–30.510–2 may be supplemented by additional protective provisions, such as personal or corporate guarantees, subordinations or standbys of indebtedness, special bank accounts, and other protective covenants of the kinds outlined in item (r) of § 1–30.414–2.

§ 1–30.512 Progress payment liquidation.

Controlling principles for liquidation of progress payments based on costs are set forth in this § 1–30.512.

§ 1–30.512–1 Ordinary method.

Except as authorized by § 1–30.512–2, the required method for liquidation and the applicable liquidation percentages are:

(a) When costs other than for direct labor and material are in the base for progress payments, the percentage of the contract price of delivered items to be applied for liquidation of progress payments will be not less than the percentage of costs upon which progress payments are based, e.g., when progress payments are based on 75 percent of all costs, liquidation will be at a rate not less than 75 percent of the contract price of separate items as they are delivered, or when progress payments are based on 70 percent of all costs, liquidation will be at a rate not less than 70 percent of the contract price of separate items as they are delivered.

(b) When progress payments are based on 90 percent (or a specified lesser percentage) of the costs of direct labor and material, the rate of liquidation of progress payments will be not less than 90 percent (or the specified lesser percentage) of the percentage of estimated total costs represented by the estimated costs of direct if the estimated profit rate is less than 7.3 percent of total costs. If, for example, the estimated profit rate is 5 percent of total costs, the minimum liquidation percentage permitted by paragraphs (a) and (b) of § 1–30.512–2 would be approximately 71.5 percent. At this 5 percent profit rate, assuming (1) price $105, (2) costs $100, and (3) progress payments $75, this minimum liquidation rate of 71.5 percent would be necessary for recovery of the $75 of progress payments from the $105 delivery billing (75÷105=71.5 percent, and 0.715×$105=$75.07). The same principles are applicable when, pursuant to (c) of § 1–30.512–2, a liquidation rate lower than the 70 percent minimum is to be established. For example, assuming an established profit rate of 8 percent of total costs of items for which final prices have been established, the minimum liquidation rate for those items would be 69.5 percent when progress payments are at the rate of 75 percent of total costs.

Assuming, (1) fixed price $108, (2) costs $100, and (3) progress payments $75, the calculation would be: 75÷108=0.6944, and (rounding this upward to 0.695), 0.695×$108=$75.06.

(c) Paragraph (b) of § 1-30.512-1 provides the standards, and gives an example for establishing the minimum liquidation percentage when progress payments are to be at 90 percent of costs of direct labor and material (or lesser percentages of more limited costs). Thus, for example, if the base for progress payments is 90 percent of the costs of direct labor and material, and if estimated costs of direct labor and material are 70 percent of total estimated costs, liquidation will be at a rate not less than 63 percent (90×70) of the contract price of separate items as they are delivered. (See § 1-30.512-3.)

§ 1-30.512-2 Alternate method.

(a) The above method for liquidation of progress payments (§ 1-30.512-1) will not apply if, at the inception of a contract (on the basis of satisfactory cost estimates) or thereafter by amendment (based on satisfactory data on cost experience and estimated future costs) the parties shall agree on a percentage rate of liquidation which will (1) effect liquidation of the amount of progress payments involved in each invoice from which liquidation of progress payments is to be made (i.e., recovery of the portion of costs for which progress payments have been made), (2) permit payment to the contractor of not more than the cost of items delivered and accepted (less allocable progress payments) and his earned profit on those items, and (3) insure that unliquidated progress payments will not exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to that portion of the contract which has not been delivered, accepted, and invoiced.

(b) However, when progress payments are made at 75 percent of the total costs, this percentage for liquidation of progress payments, lower than prescribed by § 1-30.512-1, to the extent appropriate, shall not be fixed at a rate less than 70 percent except as provided in § 1-30.512-2(c). If the progress payment percentage of total costs is less than 75 percent, comparable relationship between the progress payment percentage and the above minimum liquidation percentage shall be maintained. Similar principles as to minimum liquidation percentages shall be applied when progress payments are to be made at 90 percent of the cost of direct labor and material, or on a more limited cost base, or at lesser percentages of limited costs. For example, when progress payments are made at 70 percent of the total costs, this percentage for liquidation of progress payments, lower than that prescribed by § 1-30.512-1, to the extent appropriate, shall not be fixed at a rate less than 65.3 percent except as provided in § 1-30.512-2(c).

(c) With regard only to items for which final prices have been established under contracts, progress payment liquidation percentages conforming to the standards stated in paragraph (a) of this § 1-30.512-2, but less than the minimum liquidation percentages stated and outlined in paragraph (b) of this § 1-30.512-2 (e.g., less than 70 percent when progress payments are based on 75 percent of total costs or less than 65.3 percent when progress payments are based on 70 percent of total costs) may be established by amendment of contracts upon submission of satisfactory information by the contractor showing separately (1) the cost of items that have been delivered, accepted, and invoiced, (2) the cost of work not delivered, accepted, and invoiced, (3) the estimated costs of completion, and (4) an applicable profit on the items for which final prices have been established that is higher than the amount of profit permitted to be released by application of the progress payment liquidation percentage then specified in the contract.

(d) Liquidation percentage rates as described herein, less than those prescribed by § 1-30.512-1 will not be established initially or by amendment except on the basis of satisfactory cost data and estimates furnished by the contractor. Contracts may be amended to reduce the liquidation rate not more frequently than once in each period of 12 months. (See § 1-30.512-3.)

§ 1-30.512-3 Liquidation percentages.

(a) Liquidation percentages shall conform to § 1-30.512-1, except as authorized by § 1-30.512-2.

(b) In the application of paragraphs (a) and (b) of § 1-30.512-2, when progress payments are at a rate of 75 percent of all costs, the minimum liquidation percentage of 70 percent would not apply if the estimated profit rate is less than 7.3 percent of total costs. If, for example, the estimated profit rate is 5 percent of total costs, the minimum liquidation percentage permitted by (a) and (b) of § 1-30.512-2 would be approximately 71.5 percent. At this 5 percent profit rate, assuming (1) price $105, (2) costs $100, and (3) progress payments $75, this minimum liquidation rate of 71.5 percent would be necessary for recovery of the $75 of progress payments from the $105 delivery billing (75÷105 =71.5 percent, and 0.715×$105=$75.07). The same principles are applicable when, pursuant to (c) of § 1-30.512-2, a liquidation rate lower than the 70 percent minimum is to be established. For example, assuming an established profit rate of 8 percent of total costs of items for which final prices have been established, the minimum liquidation rate for those items would be 69.5 percent when progress payments are at the rate of 75 percent of total costs. Assuming, (1) fixed price $108, (2) costs $100, and (3) progress payments $75, the calculation would be: 75÷108=0.6944, and (rounding this upward to 0.695), 0.695×$108=$75.06.

(c) Subparagraph (b) of § 1-30.512-1 provides the standards, and gives an example for establishing the minimum liquidation percentage when progress payments are to be at 90 percent of costs of direct labor and material (or lesser percentages of more limited costs). In the application of paragraphs (a) and (b) of § 1-30.512-2, when progress payments are at the rate of 90 percent of costs of direct labor and material, examples of the minimum liquidation rates are:

(1) When costs of direct labor and material are 70 percent of total costs, and the profit rate is 5 percent of total costs, the minimum liquidation percentage would be 60 percent. Assuming price $105, costs $100, costs of direct labor and material $70, and progress payments $63, then 63÷105=60 percent. Application of the 60 percent liquidation percentage to the delivery price of $105 recovers the $63 of progress payments.

(2) On assumptions the same as in the example in subparagraph (1) of this paragraph, except that costs of direct labor and material are computed at 80 percent of total costs ($80 of the total costs of $100), so that progress payments on the item are $72 (90 percent of $80), the minimum liquidation percentage would be 68.6 percent (72÷105= 68.6 percent, i.e., 68.57 percent rounded upward to 68.6 percent). Application of this 68.6 percent liquidation percentage to the delivery price of $105 recovers $72.03 against $72 of progress payments.

(d) In line with the standards set for progress payments based on 75 percent of all costs, calculation of minimum liquidation rates pursuant to paragraphs (a) and (b) of § 1-30.512-2, when progress payments are at 90 percent (or lesser percentage) of costs of direct labor and material (or cost more limited, will not take into account any amount of profit that exceeds 7.3 percent of total costs. Thus, in example (1) of paragraph (c) of this § 1-30.512-3 (assuming profit rate 7.3 percent of costs or any greater rate), the minimum liquidation percentage would be 58.72 percent (63 ÷107.3=58.72 percent).

(e) The above principles ((a), (b), (c), (d)) apply when progress payments are at the rate of 70 percent of all costs or 85 percent of costs of direct labor and material, or at other percentages. In conformity to the above pattern, liquidation rates would be lower than those set out in (b), (c), and (d), to harmonize with percentages for progress payments that are lower than those mentioned in (b), (c), and (d). Thus, for instance, with regard to paragraph (a) of this § 1-30.512-3, if progress payments are at the rate of 70 percent of all costs (instead of 75 percent), the minimum liquidation rate comparable to the 70 percent liquidation rate mentioned in paragraph (b) of § 1-30.512-2, would be 65.3 percent (or a higher percentage if the estimated profit rate is less than 7.3 percent of all costs). In the first example given in paragraph (b) of this § 1-30.512-3, with progress payments at 70 percent of total costs, assuming (1) price $105, (2) costs of $100, and (3) progress payments $70, a minimum liquidation percentage of 66.7 percent would be necessary for recovery of the $70 of progress payments from the $105 delivery billing (70÷105= 66.7 percent, and 0.667×$105=70.03). In the second example given in paragraph (b) of this § 1-30.512-3, for application of (c) of § 1-30.512-2, assuming

(1) fixed price $108, (2) costs $100, and (3) progress payments $70, the minimum liquidation rate for the finally priced items would be 64.9 percent (70÷108 =64.815, and rounding this upward to 64.9, 0.649×$108=$70.09).

§ 1-30.513 Subcontracts.

(a) Subcontractors should be able to get progress payments from their customers on standards which are the same as those applicable to prime contracts. Contractors should be encouraged to extend progress payments to subcontractors on subcontracts which meet the standards for customary progress payments outlined in § 1-30.503.

(b) The policies and standards for "unusual" progress payments set forth in § 1-30.505 are equally applicable to situations where it is contemplated that contracts will provide for progress payments based on "unusual" progress payments made by a prime contractor to a subcontractor. In such cases, when the inclusion of such unusual progress payments on the subcontracts has been approved in the manner set forth in § 1-30.505, appropriate revision will be made in paragraph (j)(2) of the Progress Payments clauses set forth in §§ 1-30.510-1(a) and 1-30.510-2(a) so as to permit inclusion of the unusual progress payments on the subcontract as part of the base for progress payments on the prime contract. Such revisions are deemed not to be deviations, and do not require the clearance called for by § 1-30.517(b). Paragraph (a)(2) of each of the clauses set forth in §§ 1-30.510-1 (a) and 1-30.510-2(a) applies only to the "contractor's" cost mentioned in paragraph (a)(1)(i) of such clauses, and does not apply to the progress payments to subcontractors mentioned in paragraph (a)(1)(ii) of the subject clauses.

§ 1-30.513-1 Subcontractor progress payments.

When progress payments have been made by a prime contractor to a subcontractor pursuant to the provisions of the applicable prime contract and subcontract, the progress payment to the prime contractor to reimburse him for such progress payment to the subcontractor shall include the full amount of his progress payment made to the subcontractor. When a percentage less than 100 percent has been specified on existing contracts, this lesser percentage will control the amount of progress payments to be made pursuant to (a)(1)(ii) of the clauses set forth in §§ 1-30.510-1(a) and 1-30.510-2(a) and the maximum limit on unliquidated progress payments on account of unliquidated progress payments to subcontractors under (a)(3)(i) of such clauses.

§ 1-30.513-2 Adaptation of uniform clause for subcontracts.

Contracting officers are not required to review or approve subcontracts merely because they provide for progress payments. However, they shall check and review subcontracts providing for progress payments to the extent appropriate in the ordinary course of administration of the Progress Payments clause of prime contracts. The duty rests on the prime contractor to see to it that his subcontracts which provide for progress payments and which are to be included in the base for progress payments pursuant to the provisions of paragraph (j) of the clauses set forth in §§ 1-30.510-1(a) and 1-30.510-2(a), conform to those provisions of the contract. In adapting the clauses set forth in §§ 1-30.510-1(a) and 1-30.510-2(a) for use in subcontracts, to conform to paragraph (j) thereof, the subcontract Progress Payments clause should have appropriate changes to reflect the position of the prime contractor as purchaser and of the subcontractor as vendor, and to indicate that the progress payments under the subcontract are being made and administered by the prime contractor. However, the title provision of the Progress Payments clause of the subcontract shall provide for the vesting of title directly in the Government, as set forth in paragraph (d) of the clauses provided in §§ 1-30.510-1(a) and 1-30.510-2(a), and the subcontract will not substitute the prime contractor for the Government as the holder of title under that paragraph of the subcontract. In that title paragraph of the subcontract, reference to the prime contractor should, however, be substituted for the word "Government" in the parenthetical expression concerning drawings and technical data, and also in the second sentence of the paragraph. In the subcontract counterpart of (g) of the clauses provided in §§ 1-30.510-1(a) and 1-30.510-2(a) entitled "Reports—Access to Records" the references to "Contracting Officer" and "Government" should not be deleted, but may in each case be expanded so as to refer to the "Contracting Officer or the prime contractor," (see paragraph (g)(i)), and to the "Government or the prime contractor," (see paragraph (g)(ii)).

With regard to the subcontract counterpart of paragraph (h), entitled "Special Provisions Regarding Default", of the clauses provided in §§ 1-30.510-1(a), and 1-30.510-2(a) only the substance of the first 26 words of that paragraph (with a reference to the prime contractor having been substituted for "Government"), is required in order to conform to the provisions of (j)(2) of the clauses.

§ 1-30.514 Progress payments on subcontracts under cost-reimbursement types of prime contracts.

The policies, standards, and procedures of this Subpart 1-30.5 and its references are applicable to progress payments to subcontractors and suppliers on fixed-price types of subcontracts under cost-reimbursement types of prime contracts. For the prime contractor to be reimbursed for such progress payments, it is required that the subcontracts involving progress payments conform to these regulations. Specifically, the case must meet the standards for customary progress payments (§ 1-30.503) and progress payment percentages must not exceed those authorized by § 1-30.503 (unless unusual progress payments to the subcontractor are approved in accordance with section 1-30.505), liquidation must conform to § 1-30.512, and one of the uniform clauses (§ 1-30.510) adapted for subcontract use (§ 1-30.513-2) must be utilized.

§ 1-30.515 Letter contracts.

When progress payments are to be made under letter contracts or similar preliminary contractual instruments, one of the clauses set forth in §§ 1-30.510-1 (a) or 1-30.510-2(a) may be incorporated with the following modifications:

(a) Paragraph (a)(4) will be replaced by a provision limiting the aggregate amount of progress payments made under the letter contract to a stated amount, not exceeding 70 percent of the maximum liability of the Government under the letter contract (or such lesser percentage as may be applicable in accordance with the last two sentences of § 1-30.511-4 if the clause set out in § 1-30.510-2(a) is to be used). Separate limits may be prescribed for separate specified parts of the work.

(b) Until unit delivery billing prices are specified, paragraph (b) of the clause concerning liquidation will not be operative, and will be supplemented by the additional provision set out below:

Progress payments made hereunder shall be liquidated in the following manner, unless previously liquidated pursuant to paragraph (b):

(1) If this letter contract shall be superseded by a fixed-price type of contract, unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the first progress or other payments which shall be made under such contract.

(2) If this letter contract shall be superseded by a cost-reimbursement type contract, progress payments made hereunder shall be liquidated by deducting the unliquidated amount thereof from the first payments which shall be made under such cost-reimbursement contract.

(3) If this letter contract shall not be superseded by a contract calling for the furnishing of all or part of the articles or services covered hereby, unliquidated progress payments made hereunder shall be liquidated by deducting the amount thereof from the amount payable under the provisions of the Termination clause for this letter contract.

(4) If this letter contract shall in part be terminated and shall in part be superseded by a contract, the unliquidated progress payments made hereunder shall be allocated by the Government for the purpose of liquidation to the terminated portion of the letter contract and to the superseding contract in such proportions as the Government shall deem to be equitable, and the part of such progress payments allocated to each shall be liquidated in accordance with the applicable provisions of subdivisions (1), (2), and (3) of this paragraph.

(5) If the method of liquidating progress payments provided above shall not result in the full liquidation thereof, the Contractor shall forthwith pay the unliquidated balance to the Government upon demand.

(c) Any superseding definitive contract will contain appropriate provisions, carried forward from the letter contract, for liquidation of progress payments made under the preliminary instrument. When the superseding contract provides for progress payments, the Progress Payments clause will be supplemented by further provision as follows:

The costs, previous progress payments, aggregate progress payments, and unliquidated progress payments, mentioned in para-

graph (a) of this Progress Payments clause, include the costs incurred and progress payments made under the letter contract which has been superseded by this contract.

§ 1-30.516 [Reserved]

§ 1-30.517 Contract financing office clearance.

The following types of provisions for progress payments shall in accordance with agency procedures, receive the prior approval by the agency's contract financing office. (See § 1-30.212.)

(a) Those involving progress payments at rates exceeding 85 percent of direct labor and material costs or exceeding 70 percent of total costs, except as authorized by §§ 1-30.503 and 1-30.504;

(b) Those involving deviations, as defined in § 1-1.009-1;

(c) Those exceptional cases involving unusual risks, described in § 1-30.212;

(d) Those involving contractors as to whom it is known that within the preceding 12 months, (1) request for advance payments has been denied for financial reasons, or (2) application for guarantee of a loan to the contractor or for increase or extension of maturity of a guaranteed loan, has been disapproved for financial reasons, or (3) an approved application for guarantee of a loan or for advance payment to the contractor has lapsed or has been withdrawn; and

(e) Those involving contractors named on the consolidated list of contractors indebted to the United States, commonly known as the "Hold-Up-List."

§ 1-30.518 [Reserved]

§ 1-30.519 Contractor's request.

All invoices for progress payments on contracts containing the Progress Payment clause set out in § 1-30.510, and on contracts containing any deviation from that clause approved pursuant to § 1-30.517, will be supported by a request substantially similar to the Contractor's Request for Progress Payment format set forth in § 1-30.529, with any supporting information that may be reasonably required. The reverse side of the format contains instructions for use.

§ 1-30.520 Audit.

For the making of progress payments, principal reliance will be placed on the adequacy of the contractor's accounting system and controls (§ 1-30.506) and on the reliability of the contractor's certificates. To conserve administrative effort, hold down expense, and promote prompt payment of proper progress billings, audit before the making of progress payments should be kept to the minimum necessary for the protection of the interest of the Government. Preaudit, that is, audit before the making of a progress payment, should be limited to those situations in which there is reason to question the reliability or accuracy of the contractor's certificate, or reason to believe that the contract will involve a loss. Postreview or postaudit will be made when considered desirable by the contracting officer to determine the validity of any progress payment made on the contractor's certifications.

§ 1-30.521 Administration—general.

Progress Payments clauses cannot be self-executing, and require careful administration to insure against overpayments and losses. In all cases the physical progress of the work should be evaluated periodically to assure that the progress payments are fairly supported by the value of the work actually accomplished on the undelivered portion of the contract in conformity with the contract requirements. Also, the unliquidated progress payments should not be permitted to exceed the percentage specified in the contract, of the costs forming the base for progress payments, applicable only to the partially finished undelivered portion of the contract. It is necessary for adequate supervision of progress payments that the administering office keep itself informed concerning the contractor's overall operations and financial condition, since difficulties encountered and losses suffered in operations outside the particular progress payments contract may affect adversely the performance of that contract and the liquidation of the progress payments. For contracts with those contractors whose financial condition is doubtful or not strong in relation to progress payments outstanding or to be outstanding, or whose management is of doubtful capacity or whose accounting controls are found by experience to be weak, or who are encountering substantial difficulties in performance, full information concerning both the progress under the contracts involved (including the status of subcontract), and concerning the contractor's other operations and financial condition, should be obtained and analyzed at frequent intervals, with a view to the better protection of the interest of the Government and the taking of such action as may be proper to make contract performance more certain. If there is reason to doubt only minor elements of the costs involved in a progress billing, only the doubtful amounts should be withheld, subject to later adjustment, and the amount clearly due should be paid without awaiting resolution of the differences. So far as practicable in each case, all cost problems, particularly those involving indirect costs, of a kind likely to create disagreements in future administration of the contract, should be identified and resolved at the inception of the contract.

§ 1-30.521-1 Extent of supervision.

The extent of supervision required, whether for loss prevention or for avoidance of overpayments, should vary inversely with the experience, performance record, reliability, quality of management, and financial strength of contractors, and with the adequacy of their accounting system and controls. Review should be of a kind and degree that will be sufficient, consistent with the circumstances of individual cases, to provide timely knowledge of circumstances that would adversely affect contract performance and the liquidation of progress payments, and timely opportunity for any action that may be appropriate for the protection of the Government. Particular care must be taken to assure that the unpaid balance of the contract price will be adequate to cover the anticipated cost of completion, or that the contractor has adequate resources to complete the contract if the unpaid balance of the contract price is inadequate to cover costs of completion.

§ 1-30.521-2 Use of progress payments by contractors.

It is expected that the contractor will use the progress payments made by the Government, or equivalent amounts of money, to pay the costs incurred in the performance of the contract under which progress payments are made.

§ 1-30.522 Adjustments—retroactive price reduction—refunds.

When a retroactive price reduction has been made effective, i.e., by supplemental agreement or by unilateral determination pursuant to the price redetermination provision of the contract, the last sentence of paragraph (b) of the clause prescribed in either § 1-30.510-1(a) or § 1-30.510-2(a) requires adjustments so that the amount of unliquidated progress payments and the amounts paid or payable for supplies or services accepted will give effect to the price reduction. In this situation, the retroactive price reduction means that too much has been paid or billed for deliveries, and that from those delivery billings too much has been applied as a reduction of the unliquidated progress payment balance. The necessary adjustments would be (a) recomputation of total cash delivery payments on the basis of the reduced billing price resulting from the retroactive price reduction, and repayment by the contractor of the difference between the total recomputed payments and the total cash delivery payments that had been made, and (b) increase of the unliquidated progress payment balance by the excess of the total amounts previously applied to reduce the unliquidated progress payment balance over the amounts that would have been applied to reduce the unliquidated progress payment balance if the reduced delivery prices had been in effect from the date from which the redetermination is applicable. This same principle of upward adjustment of the unliquidated progress payment balance is also applicable in connection with interim refunds made by contractors pursuant to the provisions of incentive and price redetermination contracts, and in connection with voluntary refunds on such contracts.

§ 1-30.523 Maximum unliquidated amount.

In all cases where the contract price is sufficient to cover all costs of complete performance, and liquidation of progress payments is effected in accordance with paragraph (b) of the clause provided in § 1-30.510-1(a) or § 1-30.510-2 the amount of unliquidated progress payments will never exceed the maximum limit provided by paragraph (a)(3)(i) of the clause, unless liquidation percentages have been based on cost estimates that are less than actual costs. In such cases, if the contract involves a profit to the contractor, the actual unliquidated progress payment amount will always be less than the maximum limit

stated in paragraph (a)(3)(i) after the first delivery payment, unless liquidation percentages have been based on cost estimates that are less than actual costs. So long as performance is satisfactory and there is no reason to believe that the contract will involve a loss to the contractor or that a liquidation rate fixed by paragraph (b) of the clause or pursuant to § 1-30.512-2, is too low, there will be no need or reason to verify the relationship of the amount of unliquidated progress payments to the maximum limit prescribed by paragraph (a)(3)(i) of the clause. However, when the rate or quality of performance is unsatisfactory, or the rate of rejections is unduly high, or there is excessive wastage or spoilage, or it appears that unduly low costs have been attributed by the contractor to delivered items, or a loss to the contractor is otherwise indicated, or that the liquidation rate is too low, careful examination should be made to determine whether or not the unliquidated progress payments exceed the maximum amount permitted by paragraph (a)(3)(i) of the Progress Payment clause. The services of the agency audit organization should be utilized to the fullst extent, together with the services of qualified cost analysis and engineering personnel as required. (See § 1-30.519; Section III of Instructions of the format for Contractor's Request for Progress Payments set forth in § 1-30.529(b); and § 1-30.524-6.)

§ 1-30.524 Suspension or reduction of payments—general.

In the process of reviewing individual progress payments already existing or hereafter established, action to reduce or slow down progress payments or to increase liquidation rates (unless justified on other grounds, such as overpayments or unsatisfactory performance) should be consistent with contract provisions, and never taken precipitately or arbitrarily. Any such reduction of progress payments on active contracts (other than normal liquidation pursuant to the contract) should be effected only after notice to and discussion with the contractor, and after full exploration of the contractor's financial condition, existing or available credit arrangements, projected cash requirements, effect of progress payment reduction on the contractor's operations, and generally on the equities of the particular situation. Where contract performance is satisfactory, and there is neither overpayment not anticipated loss, proper progress payments, adequately verified, should be paid promptly when earned and billed in accordance with contract provisions, even though the terms of the particular contract may make the payment discretionary rather than mandatory, and such proper payments should not be held up or denied because of the contractor's lack of need for the payment. Paragraph (c) of each clause prescribed in § 1-30.510 provides the Government the right to reduce, suspend, or increase the rate of liquidation of progress payments, whenever any of the circumstances there described are found to exist. The rights reserved to the Government by these paragraphs are for the purpose of protecting the interests of the Government, fostering satisfactory contract performance, and guarding against overpayments and losses. The paragraphs should be administered with these purposes in mind. Action taken pursuant to these paragraphs should be fair and reasonable under the circumstances of particular cases, and supported by substantial evidence. Findings made under the paragraphs should be in writing.

§ 1-30.524-1 Failure to comply with contract.

Except for the purpose of correcting overpayments or obtaining amounts due from the contractor, action will not be taken pursuant to paragraph (c)(i) of the clause provided in § 1-30.510-1(a) or § 1-30.510-2(a) for failure to comply with a requirement of the contract, if such failure has resulted solely from causes beyond the control and without the fault or negligence of the contractor. For examples of such causes, see paragraph (c) of the Default clause in § 1-8.707. Compliance with the material requirements of the contract, within the meaning of paragraph (c)(i) includes compliance with all provisions of the Progress Payment clause.

§ 1-30.524-2 Unsatisfactory financial condition.

If unsatisfactory financial condition, or failure to make progress, endangering contract performance, as described in paragraph (c)(ii) of the clause prescribed in §§ 1-30.510-1(a) or 1-30.510-2(a), is found to exist, arrangements reasonably assuring contract completion without loss to the Government will be required in connection with the making of further progress payments and the making of other payments so long as progress payments are unliquidated. Within the meaning of this paragraph (c)(ii), performance of the contract includes full liquidation of progress payments. Further payments should be withheld so long as any progress payments remain unliquidated, only upon full consideration of all pertinent facts, and upon concluding that further payments will serve to increase the probable loss to the Government.

§ 1-30.524-3 Excessive inventory.

When inventory allocated to the contract is found substantially to exceed reasonable requirements (see paragraph (c)(iii) of clauses prescribed in §§ 1-30.510-1(a) and 1-30.510-2(a)) the simplest form of adjustment to correct or avoid overpayment will be to eliminate the costs of such excess inventory from the costs shown in item 7 of the format for the contractor's request (§ 1-30.529). If that is not regarded as sufficient in a particular case, additional deductions, to the extent necessary for the correction, should be made, to liquidate progress payments, incident to billings for payments other than progress payments. Transfer of such excess inventory from the contract should also be required. The expression "reasonable requirements" includes a reasonable accumulation of inventory for future use to assure continuity of operations.

§ 1-30.524-4 Delinquency in payment of costs of performance.

The contractor's delinquency in payment of costs of contract performance in the ordinary course of business (see paragraph (c)(iv) of clauses prescribed in §§ 1-30.510-1(a) and 1-30.510-2(a)) may be an indication of unsatisfactory financial condition or other circumstances endangering contract performance and involving probability of loss to the Government. If such delinquency is not connected with poor financial condition that is so unsatisfactory as to endanger contract performance or to involve reasonably foreseeable loss to the Government, further progress payments and other payments should not necessarily be denied to protect the unliquidated progress payments and minimize risks of additional losses, and payments may be continued at the contract rate, or in reduced amounts, in connection with appropriate arrangements to (a) cure the contractor's delinquencies in payment of his costs of contract performance, (b) avoid further delinquencies, and (c) reasonably assure completion of the contract without loss to the Government. (See also, § 1-30.524-3.) Amounts claimed by subcontractors, suppliers and others, but disputed in good faith by the contractor, should not be considered delinquent until determined due by a court (or by arbitration if applicable). However, any such disputed amounts shall be excluded from costs of performance so long as they are disputed.

§ 1-30.524-5 Fair value of undelivered work.

In connection with determining the relation of the amount of unliquidated progress payments to the fair value of the work accomplished on the undelivered portion of the contract (see paragraph (c)(v) of clauses prescribed in §§ 1-30.510-1(a) and 1-30.510-2(a)) the principles stated in § 1-30.523 are applicable. In determining action, if any, to be taken, the contracting officer (utilizing available audit, engineering, inspection, and cost analysis services) will give full consideration to the degree of completion of contract performance, the quality and amount of work performed on the undelivered portion of the contract, the amount of work remaining to be done and the estimated costs of completion of performance, and the amount remaining unpaid under the contract. If the contracting officer finds that the fair value of the work done under the undelivered portion of the contract, in relation to the contract price, is less than the unliquidated progress payments, his actions will be governed by the principles stated in §§ 1-30.524-2 and 1-30.524-4. This fair value could not exceed the contract price of undelivered work under the contract, less the estimated total future costs of completion of the contract. When this fair value is found to be less than the amount of the unliquidated progress payments, all further payments on the contract will be controlled in such a manner as to hold

the unliquidated progress payments within the fair value of the work done on the undelivered portion of the contract. (See also § 1–30.525–1.)

§ 1–30.524–6 Erroneous cost estimates.

When liquidation percentages lower than those called for by § 1–30.512–1 are established pursuant to § 1–30.510–2, it may occur that actual costs and future cost of performance are higher than the estimated costs used to establish liquidation rates. In such cases (see paragraph (c)(vi) of the clause presented in § 1–30.510–1(a) and paragraph (c)(iv) of the clause prescribed in § 1–30.510–2(a)) appropriate increase of the liquidation percentage will be necessary to adjust for any under-liquidation that may have occurred, to bring the amount of unliquidated progress payments within the limits of paragraph (a)(3) of these clauses, and to assure the adequacy of future liquidations. Increase of the liquidation percentage will also become necessary even though the provisions of § 1–30.512–2 have not been applied in fixing the liquidation percentage, when progress payments are based on costs of direct labor and material only (§ 1–30.510–2) or any limited cost base (§ 1–30.511–5), and actual costs forming the base for progress payments are higher than the estimated eligible costs used in establishing the liquidation percentage.

§ 1–30.525 Government title.

Since the clauses in § 1–30.510 give the Government title to all of the materials, work in process, and finished goods under contracts after the making of progress payments thereon, care should be taken to assure, to the extent reasonably necessary, that the title to the Government will be free of all encumbrances. The procedure in this respect will necessarily vary with the particular circumstances of individual cases. Ordinarily, in the absence of reason to believe that the Government title may be subject to encumbrance, the contractor's certificate will be relied on. If any arrangements or conditions are found that would impair the contractor's right of disposition of the property affected by the progress payments, appropriate arrangements should be made to establish and protect the Government title. The existence of any such encumbrance is a violation of the contractor's obligations under the contract.

§ 1–30.525–1 Loss, theft, destruction, or damage.

Paragraph (e) of the clauses presented in §§ 1–30.510–1(a) are not intended to apply to normal spoilage. The risk of loss as to property affected by the Progress Payments clause is on the contractor, except to the extent that by some special provision of the contract (such as that relating to aircraft in the open) the Government shall have expressly assumed the risk of loss. Such express assumption of risk by the Government is not made in the Progress Payments clause, the Default clause, or the Termination clause. Because of problems of administering the contract, especially those connected with property responsibility and inventory control, the risk of loss on property to which the Government holds title because of progress payments must be on the contractor to the same extent that it would be if the contractor held title to the property. This risk of loss carries with it the accompanying duty to repay to the Government the amount of unliquidated progress payments based on cost allocable to lost, stolen, or destroyed property or to the damaged portion of the property. If the Government has expressly assumed particular risks of loss, then, to the extent of such express assumption of risk by the Government, the contractor would not be obligated to repay to the Government the amount of unliquidated progress payments based on costs allocable to such lost, stolen, destroyed, or damaged property. (See, however, paragraphs (c)(v) and (c)(vi) of the clauses prescribed in §§ 1–30.510–1(a) and 1–30.510–2(a), respectively, as to future payments on the contract after such loss, damage, theft, or destruction.)

§ 1–30.525–2 Government-furnished property.

Contract provisions referring to or defining liability for Government-furnished property do not apply to property to which the Government shall have acquired title solely pursuant to the provisions of paragraph (d) of the Progress Payments clauses prescribed in § 1–30.510.

§ 1–30.525–3 Special tooling.

When the contractor furnishes special tooling, pursuant to a special tooling clause in the contract, and such special tooling is not to be delivered to the Government as an end item under the contract, the handling and disposition of such special tooling should be governed by the Special Tooling clause of the contract, even though title to such special tooling is held by the Government pursuant to the Progress Payment clause of the contract.

§ 1–30.525–4 Termination for convenience of the Government.

After the giving of notice of termination under contract provision for Termination for Convenience of the Government, the property to which the Government has title pursuant to the Progress Payments clause and which is a part of termination inventory should be acquired or disposed of in accordance with the provisions of the Termination clause of the contract and of applicable laws and regulations. The acquisition or disposition of such termination inventory shall be governed by the Termination clause, even though title to all or a portion of such inventory is in the Government pursuant to the Progress Payments clause of the contract.

§ 1–30.525–5 Scrap—excess property.

(a) In the course of proper performance of contracts, contractors are permitted to sell or otherwise dispose of current production scrap in the ordinary course of business, notwithstanding the Government's title under the Progress Payments clause. Permission of the contracting officer for such disposal of scrap is not required. With the permission of the contracting officer and on terms approved by him, contractors may also acquire or dispose of materials, inventories, or work in process to which the Government has acquired title pursuant to the Progress Payments clause of the contract, including transfer of such property to other work of the contractor. Proceeds of scrap disposal will be credited against the costs of contract performance. Costs allocable to property, other than scrap, so transferred from the contract will be eliminated from the costs of contract performance, and the contractor shall be required to repay to the Government an amount equal to the unliquidated progress payments allocable to the property so transferred from the contract.

(b) When (1) the contractor has completed all work called for by the contract, and (2) such work has been delivered to and accepted by the Government, and (3) progress payments made under the contract have been fully liquidated, and (4) the contractor has fully performed all his obligations under the contract (including the making of any payments to which the Government may be entitled under the contract, and including compliance with any other provisions of the contract, such as the Termination clause or the Government-furnished property clause), any excess property remaining is to be regarded as having not been allocated or properly chargeable to the contract under sound and generally accepted accounting principles and practices, and this outside the scope of the Progress Payments clause which would have vested title in the Government. Accordingly, the contractor holds title to such excess property and may deal with it as he desires.

§ 1–30.526 Consideration for progress payments—awards.

When a Progress Payments clause is included at the inception of a contract, no separate consideration is charged for the Progress Payments clause, and there shall be no provision for interest or other specific charge for progress payments, or for a reduction in payments (other than any agreed discount for prompt payment) by reason of the making of progress payments. The worth of the Progress Payments clause to the contractor is expected to be reflected in one or both of (a) a bid or negotiated price that will be lower than such price would have been if provision had not been made for progress payments, or (b) contract terms and conditions, other than price, that are more beneficial to the Government than they would have been if provision had not been made for progress payments.

§ 1–30.527 Amendments to provide progress payments.

There should be ordinarily no occasion to amend contracts to provide for progress payments unless there has been material change from the circumstances contemplated by the parties when invitations for bids were issued or the con-

tract was entered into without progress payment provision. However, cases do occur (a) in which the actual lead time or preparatory period between the beginning of work and the first delivery substantially exceeds the estimated lead time and in fact runs or will run over 6 months (§ 1–30.503), or (b) in which unusual circumstances bring about unexpected substantial accumulation of predelivery costs having material impact on the contractor's working funds (§ 1–30.505). These cases may arise from occurrences such as (a) uncertainties or errors in specifications, (b) contract change notices, (c) Government delays in testing, inspection, furnishing of material or equipment, furnishing of stock numbers, packaging or shipping instructions or shipping documents, or completion of contract supplements, (d) stretchouts or stop-work orders, (e) performance difficulties of subcontractors suppliers, and (f) causes beyond the control and without the fault or negligence of the contractor of the kinds mentioned in paragraph (c) of the Default clause provided in § 1–8.707. In these kinds of cases, requests of contractors for amendments to provide progress payments should be considered promptly, in the light of the circumstances then existing. If the circumstances then existing approximate conditions under which progress payments would have been properly provided in conformity with these regulations at contract inception, if the new circumstances had been foreseen, progress payments should be provided by amendment. In this connection see particularly §§ 1–30.202, 1–30.204, 1.30.205, 1–30.206, 1–30.207, 1–30.210, 1–30.210–1, and 1–30.528.

§ 1–30.528 Consideration for amendments providing for progress payments.

Contracts may not be modified except in the interest of the Government. Contracts which do not provide for progress payments may be amended to provide for progress payments only when the amendment provides new and valuable consideration moving to the Government. Appropriate price reduction may provide this consideration. In the varying circumstances of individual cases, the consideration for progress payments need not necessarily be monetary. Agreements by the contractor, incorporated in such an amendment, for the benefit of and substantially advantageous to the Government, may constitute sufficient consideration for an amendment providing for progress payments. When estimated financing costs have been included as an element (whether or not identified) in the contract price of a contract not providing for progress payments, it is fair to expect elimination of the applicable portion of that element of the price when progress payments are provided by amendment. The fair and reasonable consideration for the progress payment amendment should approximate in value as nearly as practically ascertainable the amount by which the contract price would have been smaller if a Progress Payments clause had been contained in the contract in the first instance. In the absence of definite information on this point, pertinent factors for estimating the fair and reasonable amount of consideration would include (a) the amounts of progress payments expected to be outstanding for an estimated period of time, (b) the cost of equivalent working funds to the contractor, and (c) the estimated profit rate expected to be earned by contract performance. If not accomplished by a contract price reduction, other concessions or agreement by the contractor, advantageous to the Government and incorporated in the amendment, may be fairly evaluated and accepted as being of value reasonably equivalent to a price reduction. This consideration should be such as is fair, equitable and reasonable in the light of the circumstances of each case. (See § 1–30.527.) This consideration should be for the progress payment amendment, and their shall be no provision for interest or other specific charge for progress payments, or for a reduction in payments after the progress payment amendment (other than any agreed discount for prompt payment) by reason of the making of progress payments.

§ 1–30.529 Format 529, Contractor's request for progress payment.

(a) Page 1 of Format 529.

CONTRACTOR'S REQUEST FOR PROGRESS PAYMENT

TO BE COMPLETED IN ACCORDANCE WITH INSTRUCTIONS ON REVERSE SIDE

SECTION I - IDENTIFICATION INFORMATION

1. TO:

2. FROM: *(Contractor's Name and Address)*

3. a. TOTAL CONTRACT PRICE $

4. CONTRACT NUMBER

5. a. PROGRESS PAYMENT REQUEST NUMBER

b. CONTRACT PRICE OF ITEMS TO BE DELIVERED, ACCEPTED AND INVOICED $

b. INVOICE NUMBER AND DATE

b. DATE OF THIS REQUEST

c. AMOUNT REQUESTED $

SECTION II - STATEMENT OF TOTAL COSTS INCURRED UNDER THIS CONTRACT FROM _____ TO _____

7. COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE	
a. DIRECT MATERIAL	$
b. DIRECT LABOR *(If prime contractor only)*	
c. MANUFACTURING AND PRODUCTION EXPENSE *(Specify rate ____ %)*	
d. TOTAL OTHER DIRECT COSTS *(Specify in attached statement)*	
e. SUBTOTAL OF LINES 7a THROUGH 7d, AS APPLICABLE	
f. GENERAL AND ADMINISTRATIVE EXPENSES *(Specify rate ____ %)*	
g. TOTAL OF LINES 7e AND 7f.	
8. PERCENTAGE (____%) APPLIED TO ITEM 7g FOR PROGRESS PAYMENT AND DOLLAR AMOUNT	
9. a. PROGRESS PAYMENTS MADE TO SUBCONTRACTORS	
b. LIQUIDATED PROGRESS PAYMENTS TO SUBCONTRACTORS	
c. TOTAL UNLIQUIDATED PROGRESS PAYMENTS TO SUBCONTRACTORS *(To Item 9b)*	
d. SUBCONTRACT PROGRESS BILLINGS APPROVED FOR CURRENT PAYMENT	
10. SUBCONTRACT PROGRESS PAYMENTS AND BILLINGS *(Items 9c plus 9d)*	
11. a. TOTAL DOLLAR AMOUNT *(Items 8 plus 10)* $	
b. PERCENTAGE (____%) APPLIED TO ITEM 3a LIMITING AGGREGATE PROGRESS PAYMENT AND DOLLAR AMOUNT	
c. LESSER OF 11a OR 11b	
12. TOTAL AMOUNT OF PREVIOUS PROGRESS PAYMENTS REQUESTED	
13. MAXIMUM BALANCE ELIGIBLE FOR PROGRESS PAYMENTS *(Item 11c minus Item 12)*	

SECTION III - TO BE COMPLETED BY THE CONTRACTOR ONLY WHEN SPECIFICALLY REQUESTED BY THE CONTRACTING OFFICER

14. COSTS INCLUDED IN ITEM 7g, APPLICABLE TO ITEMS DELIVERED, INVOICED, AND ACCEPTED TO THE SECOND DATE IN HEADING OF SECTION II	$
15. COSTS ELIGIBLE FOR PROGRESS PAYMENTS, APPLICABLE TO UNDELIVERED ITEMS AND TO DELIVERED ITEMS NOT INVOICED AND ACCEPTED *(Item 7g less Item 14)*	
16. PERCENTAGE (____%) APPLIED TO ITEM 15 LIMITING PROGRESS PAYMENTS AND DOLLAR AMOUNT	
17. CONTRACT PRICE OF ITEMS DELIVERED, ACCEPTED AND INVOICED TO THE SECOND DATE IN HEADING OF SECTION II	
18. AMOUNT OF ADVANCE PAYMENTS OUTSTANDING, IF ANY, INCLUDING ACCRUED INTEREST	
19. NET BALANCE OF CONTRACT PRICE OF ITEMS NOT DELIVERED, ACCEPTED AND INVOICED *(Item 3b less Item 17)*	
20. TOTAL AMOUNT APPLIED AND TO BE APPLIED TO REDUCE PROGRESS PAYMENTS	
21. UNLIQUIDATED PROGRESS PAYMENTS *(Item 13 less Item 20)*	
22. MAXIMUM PERMISSIBLE UNLIQUIDATED PROGRESS PAYMENTS	
a. ITEM 16 PLUS ITEM 19 $	
b. PERCENTAGE (____%) APPLIED TO ITEM 19 AND DOLLAR AMOUNT	
c. LESSER OF ITEM 22a OR ITEM 22b	
23. AMOUNT OF CURRENT INVOICE FOR PROGRESS PAYMENT *(Item 22c less Item 21, or Item 13, whichever is the smaller)*	

SECTION IV - CERTIFICATION

I CERTIFY THAT THE ABOVE STATEMENT *(With attachments)* HAS BEEN PREPARED FROM THE BOOKS AND RECORDS OF THE ABOVE NAMED CONTRACTOR IN ACCORDANCE WITH THE CONTRACT AND THE INSTRUCTIONS HEREON, AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT IT IS CORRECT, THAT ALL THE COSTS OF CONTRACT PERFORMANCE *(Except as hereinth reported in writing)* HAVE BEEN PAID OR WILL BE PAID CURRENTLY, BY THE CONTRACTOR, WHEN DUE, IN THE ORDINARY COURSE OF BUSINESS, THAT THE WORK REFLECTED ABOVE HAS BEEN PERFORMED, THAT THE QUANTITIES AND AMOUNTS INVOLVED ARE CONSISTENT WITH THE REQUIREMENTS OF THE CONTRACT, THAT THERE ARE NO ENCUMBRANCES *(except as reported in writing herewith, or on previous progress payment request No. _____)* AGAINST THE PROPERTY ACQUIRED OR PRODUCED FOR AND ALLOCATED OR PROPERLY CHARGEABLE TO THE CONTRACT WHICH WOULD AFFECT OR IMPAIR THE GOVERNMENT'S TITLE, THAT THERE HAS BEEN NO MATERIALLY ADVERSE CHANGE IN THE FINANCIAL CONDITION OF THE CONTRACTOR SINCE THE SUBMISSION OF THE MOST RECENT WRITTEN INFORMATION DATED _____, OR IN THE STATUS OF CONTRACT PERFORMANCE SINCE THE SUBMISSION OF THE MOST RECENT WRITTEN INFORMATION DATED _____, BY THE CONTRACTOR TO THE GOVERNMENT IN CONNECTION WITH THE CONTRACT, AND THAT AFTER THE MAKING OF THE REQUESTED PROGRESS PAYMENT THE UNLIQUIDATED PROGRESS PAYMENTS WILL NOT EXCEED THE MAXIMUM UNLIQUIDATED PROGRESS PAYMENTS PERMITTED BY THE CONTRACT.

TYPED NAME AND TITLE OF PERSON SIGNING	DATE SIGNED	SIGNATURE *(For Contractor)*

SPECIMEN

(b) Page 2 of Format 529.

INSTRUCTIONS

SECTION I - IDENTIFICATION INFORMATION - Complete items 1 through 6 in accordance with the following instructions:

ITEM 1 - TO - Enter the name and address of the contracting officer or his representative.

ITEM 2 - FROM - CONTRACTOR'S NAME AND ADDRESS - Enter the name and mailing address of the contractor.

ITEM 3a - TOTAL CONTRACT PRICE - Enter the total contract price, as amended. If the contract provides for price redetermination, enter the initial price until changed; if the contract is of the incentive type, enter the target price until changed; not the ceiling or maximum price. For fixed contracts, enter the maximum expenditure authorized by the contract, as amended.

ITEM 3b - CONTRACT PRICE OF ITEMS TO BE DELIVERED AND/OR ACCEPTED - Enter the total billing price of the undelivered items and/or of delivered items not yet accepted and invoiced under the contract.

ITEM 4 - CONTRACT NUMBER - Enter the number of the contract on which progress payment is being requested.

ITEM 5 - INVOICE NUMBER AND DATE - Enter the number and date of the invoice for the progress payments requested herein. If no invoice is submitted herewith, enter "none".

ITEM 6a - Enter the number assigned to this request. All requests under a single contract must be numbered consecutively beginning with 1. Each subsequent request under the same contract must continue in sequence the same series of numbers without omission or duplication.

ITEM 6b - Enter the date of this request.

ITEM 6c - Enter the amount of progress payment requested herein, which should not exceed the amount shown in item 11c.

SECTION II - GENERAL INSTRUCTIONS - DATES - Spaces are provided in the heading of Section II for the entry of two dates. In the first space, enter the date of the first incurrence of costs of performance of the kind eligible for progress payments under the contract. In the second space, enter the date through which such costs have been accumulated for inclusion in this request and are therefore shown individually, as applicable item entries in Sections II and III.

LIMITED COSTS BASIS - Certain contracts limit the progress payment base to incurred costs of direct labor and/or direct material or other specified costs which are less than incurred "Total costs". When the contract includes such limitations only those costs eligible for progress payments under the contract are to be identified and reported in Section II.

TOTAL COST BASIS - Certain contracts provide that the progress payment base here will be total incurred costs. In such cases [illegible] the expenses incurred in performance of the contract [illegible] reasonable, allocable to the contract, consistent with sound and generally accepted accounting principles and practices, and which are not otherwise excluded by the contract. (For exclusions, see the progress payment clause of the contract.)

MANUFACTURING AND PRODUCTION EXPENSE: GENERAL AND ADMINISTRATIVE EXPENSE - Under certain conditions, eligible incurred costs include manufacturing and production expenses and general and administrative expenses which have been incurred for performance of the contract which are reasonable, allocable to the contract, and consistent with sound and generally accepted accounting principles and practices.

(NOTE: In connection with the first progress payment request on a contract, attach an explanation of the method, bases and period used in determining the amount of each of these two types of expenses. If the method, bases or periods used for computing these expenses differ in subsequent requests for progress payments under the contract, attach an explanation of such changes to the progress payment request involved.)

INCURRED COSTS INVOLVING SUBCONTRACTORS - If the incurred costs eligible for progress payments under the contract include costs shown on invoices of subcontractors, suppliers and others that portion of the costs computed on the basis of such invoices can only include costs for: (1) completed work to which the prime contractor has acquired title; (2) materials delivered to which the prime contractor has acquired title; (3) services rendered; and (4) costs billed under cost reimbursement or time and material subcontracts for work to which the prime contractor has acquired title.

SECTION II - SPECIFIC INSTRUCTIONS

ITEM 7 - COSTS ELIGIBLE UNDER PROGRESS PAYMENT CLAUSE - Costs to be shown in items 7a through 7g are not to include advance payments, down payments, deposits, or progress payments made or to be made to subcontractors, suppliers or others.

ITEM 7 - a and b - If applicable, enter the direct material and direct labor costs.

ITEM 7 - c - If applicable, enter the rate used in computing manufacturing and production expenses and the computed dollar amount.

ITEM 7 - d - Enter the total of all other direct costs. Attach a STATEMENT showing each such cost and the amount thereof.

ITEM 7 - e - Self-explanatory.

ITEM 7 - f - If applicable, enter the rate used in computing general and administrative expenses and the computed dollar amount.

ITEM 7 - g - Self-explanatory.

ITEM 8 - Enter the percentage figure for progress payments stated in the contract (*Paragraph (a)(1)(i) of the uniform progress payment clause*) and the computed dollar amount based on that percentage, i.e., the computed dollar amount of the entry in item 7g.

ITEMS 9 AND 10 - Make no entry unless the contract requires progress payments to the contractor on account of progress payments to subcontractors. Include only progress payments to subcontractors which conform to the progress payment provisions of the prime contract.

ITEM 9 - a - Enter only progress payments actually paid.

ITEM 9 - b - Enter total progress payments accepted from subcontractors.

ITEM 9 - c - Self-explanatory.

ITEM 9 - d - Make no entry unless the prime contract specifies progress payments on account of unpaid subcontract progress payment billings which have been approved for current payment in the ordinary course of business. Include only such approved unpaid invoices.

ITEM 10 - Self-explanatory.

ITEM 11 - a - Self-explanatory.

ITEM 11 - b - Enter the percentage stated in the contract which limits aggregate progress payments (*Paragraph (a) (4) of the uniform progress payment clause*) which can be made and compute the dollar amount based on that percentage, i.e., the computed dollar amount of the entry in item 3a.

ITEM 11 - c - Self-explanatory.

ITEMS 12 AND 13 - Self-explanatory.

SECTION III - GENERAL INSTRUCTIONS - This section is to be completed only when specifically requested by Government personnel responsible for administration of the contract. Completion of this section will be requested when the rate or quality of contract performance is not satisfactory, or when there is reason to believe that: (a) the contractor is having a loss to the contractor; or (b) insufficient costs have been allocated to delivered items; or (c) outstanding progress payments exceed the total value of the work accomplished on the applicable portion of the contract or (2) the applicable percentage of [illegible] allocated to unfinished work.

SECTION III - SPECIFIC INSTRUCTIONS

ITEM 14 - Of the costs reported in item 7g, compute and enter only costs which are applicable to items delivered, invoiced and accepted to the applicable date. In order of preference, these costs are to be computed on the basis of one of the followings: (a) the actual unit cost of items delivered, giving proper consideration to the deferment of the overall load costs; (b) projected unit costs (*based on experienced* costs, plus estimated costs to complete the contract), where the contractor maintains cost data which will clearly establish the reliability of such estimates; and (c) the total contract price of items delivered.

ITEM 15 - Self-explanatory.

ITEM 16 - Enter the percentage stated in the contract limiting unliquidated progress payments in relation to eligible costs (*Paragraph (a)(2)(i) of the uniform progress payment clause*). Compute and enter the dollar amount based on that percentage, i.e., the percentage of the entry in item 15.

ITEM 17 - Enter the total billing price, as adjusted, of items delivered, accepted and invoiced to the applicable date.

ITEMS 18 AND 19 - Self-explanatory.

ITEM 20 - This entry is to be completed from the contractor's records. It is the total of all amounts which have been or are to be applied from previous billings to reduce outstanding progress payments, including amounts, if any, of payments OTHER than those applied from previous billings. *(NOTE: If the entry includes reductions effected by means* other than through previous billings, attach a STATEMENT showing details thereof.)

ITEM 21 - Self-explanatory.

ITEM 22 - a - Self-explanatory.

ITEM 22 - b - Enter the percentage stated in the contract, limiting unliquidated progress payments to that percentage of the contract price of items which have not been delivered and accepted (*Paragraph (a)(2)(ii) of the uniform progress payment clause*).

ITEM 22 - c - Self-explanatory. *(NOTE: If the entry in this item is less than the entry in item 21, there has been an OVERPAYMENT which requires adjustment.)*

ITEM 23 - Self-explanatory.

SPECIMEN

Subpart 1–30.6—[Reserved]

Subpart 1–30.7—Assignment of Claims

§ 1–30.700 Scope of subpart.

This subpart prescribes the policies and procedures relating to the assignment of claims of money due or to become due under Government contracts.

§ 1–30.701 General.

The Assignment of Claims Act of 1940, as amended, 54 Stat. 1029, 65 Stat. 41 (31 U.S.C. 203, 41 U.S.C. 15), hereafter referred to in this Subpart 1–30.7 as the Act, permits the assignment to a bank, trust company, or other financing institution, including any Federal lending agency of moneys due or to become due from the United States under a contract providing for payments aggregating $1,000 or more, provided the conditions specified in the Act, as set forth in § 1–30.702, are met. The Act further provides that an assignee receiving payment under an assignment is not, by reason of any liability of the assignor to the United States or any department or agency thereof, whether arising from or independently of the assigned contract, obligated or liable to make restitution, refund or repayment to the United States. Also, under the Act, the contracts of certain specified agencies, and other agencies designated by the President, may in time of war or national emergency, provide that payments made thereunder to an assignee shall not be subject to reduction or set-off for any liability of the assignor arising independently of the assigned contract.

§ 1–30.702 Conditions governing assignment of claims.

Moneys due or to become due from the United States, or any agency or department thereof under a contract, may be assigned under the following conditions:

(a) The contract provides for payments aggregating $1,000 or more;

(b) The payments are assigned to a bank, trust company, or other financing institution, including any Federal lending agency;

(c) The contract does not forbid assignment;

(d) Unless otherwise expressly permitted by the contract any assignment shall cover all amounts payable under the contract and not already paid, shall not be made to more than one party, and shall not be subject to further assignment, except that any assignment may be made to one party as agent or trustee for two or more parties participating in the financing; and

(e) That in the event of any assignment, the assignee shall file written notice of the assignment, together with a true copy of the instrument of assignment with (1) the contracting officer or the head of his department or agency; (2) the surety or sureties upon the bond or bonds, if any, in connection with the assigned contract; and (3) the disbursing officer, if any, designated in the assigned contract to make payment.

§ 1–30.703 Contract clause—Assignment of Claims.

The following clause shall be inserted in all contracts except it is not required to be used in construction contracts estimated not to exceed $10,000:

ASSIGNMENT OF CLAIMS

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing. Unless otherwise provided in this contract, payments to assignee of any moneys due or to become due under this contract shall not, to the extent provided in said Act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if this contract is made in time of war or national emergency as defined in said Act and is with the Department of Defense, the General Services Administration, the Atomic Energy Commission, the National Aeronautics and Space Administration, the Federal Aviation Agency, or any other department or agency of the United States designated by the Presi-

dent pursuant to Clause 4 of the proviso of section 1 of the Assignment of Claims Act of 1940, as amended by the Act of May 15, 1951, 65 Stat. 41.)

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

The last two sentences of paragraph (a) of the foregoing clause shall be deleted from contracts entered into with foreign contractors and may, in accordance with agency procedures, be deleted in other cases where special circumstances make it advisable in the best interests of the Government.

§ 1–30.704 Forms for assignment and notice of assignment.

There are no forms prescribed for use as an instrument of assignment or as a notice of assignment; however, the following is a suggested format for use by the assignee in providing the notice of the assignment as required by § 1–30.702 (e).

NOTICE OF ASSIGNMENT

Date _____

To: (Address to one of the parties specified in § 1–30.702(e))

This has reference to Contract No. _____, dated _____, entered into between (contractor's name and address) and (Government Agency, Name of Office, and address), for (describe nature of the contract).

PLEASE TAKE NOTICE that moneys due or to become due under the contract described above have been assigned to the undersigned pursuant to the provisions of the Assignment of Claims Act of 1940, as amended, 54 Stat. 1029; 65 Stat. 41 (31 U.S.C. 203, 41 U.S.C. 15).

A true copy of the instrument of assignment executed by the contractor on _____, (Date) is attached to the original hereof.

Payments due or to become due after such contract should be made to the undersigned assignee.

Please return to the undersigned the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and duly signed by the person acknowledging receipt on behalf of the addressee.

Very truly yours,

_____
(Name of assignee)

By _____
(Signature of signing officer)

Title _____
(Title of signing officer)

_____
_____
(Address of assignee)

ACKNOWLEDGMENT

Receipt is hereby acknowledged of the above notice and a copy of the above-mentioned instrument of assignment. These were received at _____ a.m. (p.m.) on _____, 19___.

_____
(Signature)

_____
(Title)

On behalf of _____

_____
(Name of addressee of this notice)

§ 1–30.705 Filing notice of assignment and the instrument of assignment.

The assignee should address a notice of assignment to each of the parties specified in § 1–30.702(e) and file with each party four signed copies of the notice, together with one true copy of the instrument of assignment (a certified true duplicate or a photostatic copy of the original). If a disbursing officer is not designated in the contract to make payment, it is not necessary that the notice be filed with any agency or department official other than the contracting officer or the head of his department or agency.

§ 1–30.706 Procedures upon receipt of notice of assignment and instrument of assignment.

(a) Upon receipt of the four copies of notice of assignment, together with a true copy of the instrument of assignment, by an agency official other than the contracting officer such assignment documents should be immediately forwarded to the appropriate contracting officer of the procuring activity who should, in accordance with agency procedures:

(1) Notify the appropriate certifying or disbursing officer by memorandum of the pending assignment, and subsequently of its acknowledgment or refusal and return.

(2) Examine the notice of assignment and instrument of assignment, and the contract involved to determine that the assignment is in proper form, has been properly executed and that the contractor is empowered under the contract to make the assignment. The details concerning examination of the assignment documents are set forth in § 1–30.708.

(3) If satisfied that the assignment is in proper form, acknowledge receipt of the notice of the assignment in the space provided thereon and return three copies to the assignee.

(4) Provide the fourth copy of the notice of assignment duly acknowledged and the true copy of the instrument of assignment for filing with the contract.

(b) If, for any reason, the assignment is one which the contract does not authorize the contractor to make, or is not in proper form, or is not properly executed, the contracting officer should return the copies of the notice of assignment and the copy of the instrument of assignment to the assignee with an explanation of the objections to the proposed assignment. The acknowledgement form on the notice of assignment should not be executed. If, upon receipt of the notice of assignment and a copy of the instrument of assignment, it appears that considerable delay may occur before the notice of assignment can be acknowledged or returned unacknowledged, as the case may be, the contracting officer should advise the assignee that such a delay is likely to occur and should normally furnish the assignee a statement of the reasons for the delay.

§ 1–30.707 Further assignments and reassignments.

Contracts permitting the assignment of claims for moneys due or to become due thereunder also permit, under the clause prescribed in § 1–30.703, such claims to be further assigned and reassigned by the assignee to another bank, trust company, or other financing institution, including any Federal lending agency. Copies of a written notice of further assignment and reassignment and the copy of the instrument of such further assignment and reassignment should be processed in the same manner as copies to the initial notice of assignment and instrument of initial assignment. The three acknowledged copies of the notice of further assignment or reassignment will be sent to the new assignee designated under the assignment thus acknowledged.

§ 1–30.708 Examination of assignment.

In ascertaining that an assignment is in proper form, is properly executed, and is one that the contractor is entitled to make under the contract, contracting officers should satisfy themselves that:

(a) The contract has been duly executed and approved where necessary (see § 1–2.407). Contractors frequently make assignments of claims for moneys due or to become due under a contract, upon receipt of an advance notice of award, even though the contract has neither been executed nor approved. In such cases, the copies of notices of such assignment should be immediately returned to the assignee unacknowledged.

(b) The contract is one under which claims may be assigned under the provisions of the Act. In rare cases, SECRET or CONFIDENTIAL contracts will contain provisions prohibiting assignment of claims thereunder. It should be noted that assignment of claims under SECRET or CONFIDENTIAL contracts, permitting the assignment thereof, should not be acknowledged by contracting officers until adequate steps have been taken to protect the interest of the Government.

(c) The assignment covers all amounts payable under the contract, and not already paid, and is not made to more than one person, and the assignee is a bank, trust company, or other financing institution, including any Federal lending agency. In this connection the following should be noted:

(1) Most contracts provide (see clause prescribed in § 1–30.703) that any assignment of claims thereunder shall cover all amounts payable under the contract, and not already paid, and shall not be made to more than one party, except that assignment may be made to one party as agent or trustee for two or more parties participating in the financing of a contractor. However, under the Assignment of Claims Act there is authority for a contract to embody terms permitting assignment of only a part of the

contractor's claims for moneys due or to become due, permitting assignment to more than one person. In the absence of contract provisions specifically authorizing such types of assignment, the assignments are unlawful. Because of the administrative burden on accounting and finance officers, partial assignments or assignments to more than one person, if permitted under a contract, should ordinarily be limited to cases where it is in the interest of the Government to do so, e.g., where the contractor is financially obligated to Government agencies and the assignment is made for protection of such Government agencies.

(2) Where the contract provides for advance payments, whether or not advance payments have actually been made to the contractor, notice of assignment shall not be acknowledged unless:

(i) The assignment expressly recites that the rights of the assignee are subordinate to the rights of the Government;

(A) To withhold from the contractor amounts required to liquidate advance payments; and

(B) To have deposited in the contractor's special advance payment bank account (see § 1-30.414) all moneys payable to the contractor which the contract requires the contractor to deposit in that account; and

(ii) The contracting officer obtains from the assignee an agreement that the assignee will pay to the contractor all amounts which may be received by the assignee and which the contractor is obligated by the contract to deposit in its special advance payment bank account. In special cases, additional documents signed by the contractor, or the assignee, or both, thought necessary by the contracting officer to protect the interests of the Government against the assignee, may be required by the contracting officer.

Assignments such as those referred to in this § 1-30.708(c)(2) are subordinate to the rights of the Government against the contractor under the contract involved. For the foregoing reason such assignments are not considered to be assignments of less than all amounts payable under the contract nor assignments to more than one person.

(d) The assignment shall cover only claims for moneys due or to become due under the contract involved. It must not cover any of the obligations or duties of the contractor under the contract. The contracting officer shall be sure that the copy of the instrument of assignment which is submitted to him is a duplicate of the original instrument, or has been certified as a true copy, acknowledged as such before a notary public or other officer authorized by law to administer oaths. Care shall also be taken to ascertain that the assignment has been properly executed.

(1) Assignments by corporations should be executed by an authorized representative, attested by the secretary or assistant secretary of the corporation, with the seal of the corporation impressed upon the assignments or in lieu of such seal, accompanied by a certified copy of a resolution of the corporation board of directors authorizing the representative involved to execute the assignment.

(2) If the contractor is a partnership, the instrument of assignment may be signed by one partner, provided it is accompanied by a duly acknowledged certificate to the effect that the signer is a general partner of the partnership.

(3) If the contractor is an individual, the assignment must be signed by such individual and duly acknowledged by him before a notary public or other person authorized to administer oaths.

(e) If there have been previous assignments of claims under the contract, unless assignments to more than one person thereunder are permitted by the contract provisions, the previous assignments have been fully released. Note that further assignment and reassignment is authorized as pointed out in § 1-30.707.

§ 1-30.709 Release of assignment.

The release of an assignment is required whenever there has been a further reassignment or where further payments to the contractor are anticipated under the contract after the contractor-assignor's obligation to the original assignee has been satisfied.

§ 1-30.710 Transfers of businesses and corporate mergers.

Transfers of an entire business, corporate mergers, and assignments by operation of law, each of which may affect the assignment of claims under a contract, are not prohibited by the Federal statutes and hence do not depend upon the Assignment of Claims Act of 1940, as amended, for their validity. However, in the case of transfers of a business or corporate mergers, notices of assignments of claims under the contract made by the transferee or successor corporation should not be acknowledged until the transferee or successor corporation involved has been recognized by the procuring agency as the lawful successor in interest to the Government contract. Similarly, before acknowledging an assignment made by a party who is a transferee by operation of law, the contracting officer should require the submission of a certified copy of the document evidencing the transfer by operation of law.

[F.R. Doc. 64-7333; Filed, July 23, 1964; 8:45 a.m.]